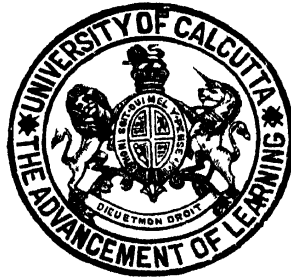
MANU-SMṚTI

MANU-SMRTI

THE LAWS OF MANU WITH THE BHĀṢYA OF MĒDHĀTITHI

Translated by
GANGĀ-NĀTHA JHĀ
Mahamahopadhyaya, M.A., D.Litt.
Vice-Chancellor, University of Allahabad

Vol. IV

Part I

Published by the
University of Calcutta
1924

DISCOURSE VIII

Law—Civil and Criminal

I. Constitution of the Court of Justice

VERSE I

DESIROUS OF INVESTIGATING CASES, THE KING SHALL ENTER THE COURT, WITH A DIGNIFIED DEMEANOUR, ALONG WITH BRĀHMAṆAS AND COUNCILLORS, VERSED IN COUNSEL.—(1)

Bhāṣya.

It has been laid down that the protection of the people is a duty of the king ; and this duty has been described in the following text : (*a*) 'As a means of livelihood, to carry arms and weapons for the Kṣattriya, and to trade, to rear cattle and agriculture for the Vaishya, and the serving of the twice-born for the Shūdra'—(10.79). The king who acts up to this attains unexcelled regions ; and in this manner virtue prospers among the people.

Other castes also, who may be living the life of the Kṣattriya, are entitled to kingship :—'Whoever happens to be the protector of the people is regarded as the *king*, Lord-Protector; and their duty has been ordained to consist in the good of the common people.' By 'protection' here is meant the *removal of troubles.*

Troubles are of two kinds—*seen* and *unseen.* It is a case of 'seen trouble' when the weaker man is oppressed by the

stronger, who takes away by force his belongings; and it is a case of 'unseen trouble' when the latter person suffers pain in the other world, through the sin accruing to him on account of his having transgressed the law (by taking what did not belong to himself). People very often act towards one another in hatred, jealousy and so forth, and hence going by the wrong path, they become subject to 'unseen' evils; and thence follows the disruption of the kingdom; since it is only the *prosperity of the people* that is called 'kingdom'; so that when the people are in trouble, where would the 'kingdom' lie?

It is for this reason that when cases are investigated and decided in strict accordance with the ordinances of scriptures, people, through fear, do not deviate from the right path; and hence they become protected against both kinds of trouble. Then again, in as much as for the king there is no other lawful means of livelihood except the fines imposed upon criminals, and the taxes and duties, any obstacles in the proper administration and collection of these leads the kingdom into trouble.

From all this it follows that for the sake of preserving the kingdom, the investigation of cases is necessary, and it is this that is now described.

The term '*vyavahāra*,' 'case,' is the name given to that action of the plaintiff and the defendant which they have recourse to for the purpose of reclaiming their rights. Or, it may stand for the non-payment of debts and such other matters themselves, which often become the subjects of dispute and as such fit for investigation, which thus becomes the duty of the king.

The term '*desirous of investigating*' is to be construed with 'shall investigate the suits' (of the next verse) and the said 'points of dispute' are referred to in detail again (in verse 4)—'Of these, the first is non-payment of debts, etc.'; the construction being that 'he shall investigate all these matters.'

The 'court' is that place which is presided over by the officer going to be described below;—'*entering*' means *going into* the place.

The question arising as to whether or not the king shall enter the Court, alone, unattended, the text adds—'*along with Brāhmaṇas.*'

Question.—"What does the adjective '*versed in counsel*' qualify? It cannot qualify the '*councillors*'; as the said qualification is implied by the very name 'councillor,' for one who does not know the art of counselling can never be called a 'councillor.' Nor can it qualify the 'Brāhmaṇas'; because since they are entrusted with the work of investigating cases, the knowledge of *counsel* (if prescribed) could be prescribed only for some transcendental purpose."

To the above we offer the following reply: The qualification is of the 'Brāhmaṇas'; if they were ignorant of counsel, they would arrive at random and wrong conclusions, and thereby bring trouble to the King. For instance, if a certain ordinary person were to file a suit against some one connected with the Chief Minister,—and the latter happens to lose the case,—then, if he were not fined, or if he were not forced to pay up the fine, the administration of justice would not be impartial; and the people would come to the conclusion that the King is either partial or too weak-minded;—on the other hand, if the man were fined, this would displease the Chief Minister, and that also would lead to trouble among the people. In such cases, if the investigating officers happen to be 'versed in counsel,' then, whenever they are in any such suspense, they postpone the proceedings of the case, under some pretext, and advise the King in private, to the following effect—'You please do something yourself, whereby the man may be made to compromise between these two parties,—this party loses and that party wins the case,—but the case has not been disposed of by us; the decision now rests with your Majesty.' Thereupon, the King, having come to know the facts of the case, orders the Chief Minister to the following effect—'Your man is going to lose his case,—but for the present the decision has been postponed, in order that your prestige may not suffer; it is for you to do something whereby the other party may be

'appeased and his grievance removed.' Upon this the Minister, whose advice is accepted by all men, takes steps to stop the evil propensities of all men.

Others hold that, just as the single eye of the crow operates in both sockets, so the epithet '*versed in counsel*' is applicable to both, '*Brāhmaṇas*' and '*councillors,*' but in different senses : when qualifying the '*councillors,*' being 'versed in counsel' connotes *the knowledge of the details of the cases*; and when qualifying the '*Brāhmaṇas,*' it connotes *impartiality.*

The Brāhmaṇas and the Councillors are not to *enter* only; but they are to help, in the best manner they can, in the 'investigating of suits' (spoken of below). If this were not meant, then their 'entering' could only be intended to serve some transcendental purpose. Thus the sense is that the King shall not decide cases by himself alone, but in consultation with the councillors and Brāhmaṇas.

'*With a dignified demeanour*';—*i.e.*, free from fickleness of speech, hand and feet. If he were fickle, there would be trouble.

The use of the term '*pārthiva,*' '*king,*' implies that the teaching here addressed is meant not only for one who is *Kṣattriya* by caste, but for others also, who may happen to be owners of land and a kingdom. Because unless he does what is here laid down his sovereignty does not become duly established.—(1)

VERSE II

THERE, EITHER SEATED OR STANDING, RAISING HIS RIGHT HAND, SUBDUED IN DRESS AND ORNAMENTS, HE SHALL LOOK INTO THE SUITS OF THE SUITORS.—(2)

Bhāṣya.

'*Seated*'—sitting on the judgment-seat.

'*Standing*'—not moving, nor seated.

'Sitting' and 'standing' constitute the only two possible alternatives, to be adopted in accordance with the gravity of

the business. If the suit is an important one, and there is much to be said (by the parties), he shall be *seated*; whereas if the suit is a light one, and there is not much to be said, he shall remain *standing*. In either case, *moving about* is absolutely precluded. While moving, his attention would be fixed upon the path he is treading, so that he could not rightly grasp what is being said by the two parties.

Others have explained that the rule here laid down is with a view to some transcendental results; and that what is meant is that when the parties consist of ascetics or Brāhmaṇas, and these remain standing, the King also shall remain *standing*, but on their being seated, he also shall be *seated*.

'*Raising his hand*'—*i.e.*, holding the hand high. This (if taken literally) would militate against what the *Sūtra-kāras* have said regarding the upper garment being always *under the right arm*. Hence all that the text means is that the hand shall be lifted up, and not allowed to be in contact with any other person near at hand. In fact, this is to be done only when the King is disallowing a certain question. This shows that he is alert and carefully watching the proceedings of the case. For as a rule, whenever a man is devoting great attention to any work, he holds his arms high. If, on the other hand, he sits at ease, the defeated party is likely to say—'The King does not pay attention to the case, hence the members of the court, not fearing him, have decided the case against us.'

'*Hand*' here stands for the *arm*; otherwise if one were to keep the *hand* only lifted up throughout the proceedings, this would be extremely painful. Nor is the advice offered with a view to any transcendental purpose.

'*Subdued in dress and ornaments.*'—What was meant by '*dignified demeanour*' in the preceding verse was that he should keep control over his external and internal organs in relation to their respective objects; and this was with a view to being easily accessible to even the most modest suitors. If he were too gaudy in his appearance, it would be difficult for the more modest suitors to retain their presence of mind,

It is for this reason that gaudy dress and ornaments should be avoided. '*Dress*' stands for the making up of the hair and clothes; '*ornaments*' for '*Karṇikā*' (the lotus-shaped Ear-ornament) and the rest. So 'gaudy dressing' would consist in the wearing of richly-coloured clothes and so forth. If the King is gaudily dressed and wearing brightly be-jewelled ornaments, it could be as difficult to look at him as at the sun, for ordinary people, specially for the accused (who would thus lose their presence of mind during the trial).

'*Look into.*'—This declares the purpose for which the King is to enter the Court-room.

This teaching regarding the King himself 'looking into' the suits is with special reference to the inflicting of punishments; and applies to the entire investigation, ending with the full setting forth of the statements of both parties. And the intention is that by doing this he would be fulfilling his duty of 'protecting' the people. Such 'looking into' cases not being possible for other persons, no one else could be entitled to it. As for helping in the settling of doubtful points, this result of the investigation interests all persons; and as such like the rules relating to expiations, this also falls within the province of the learned Brāhmaṇa; specially as in connection with the latter it has been declared that 'he shall speak out on difficult points of law.' Similarly when a case is being investigated where the parties belong to the same profession,—such for instance as traders, cultivators, cattle-breeders, etc.,—if other persons belonging to the same profession find that the points in dispute are such as would affect them all, then they are all entitled to take part in the investigation.

In this connection they declare as follows (*Nārada*, 1.8)—'(*a*) Families, (*b*) Guilds, (*c*) Tribes, (*d*) Authorised person, and (*e*) the King constitute the very foundation of case-proceedings; and among these the following is superior to the preceding.' Of these, (*a*) the term 'families' stands for the body of relations; the parties shall not deviate from the decision arrived at by these. (*b*) If however one party should have

no confidence in these, and should say—'these persons are more nearly related to you,'—then the case shall be referred to the guilds,—this term 'guild' standing for a body of traders and others who may be following the same profession; these persons are weightier than relatives; because the latter, through fear of relations, do not always exercise a check upon the person who deviates from the right path; while the members of a guild fight shy of any matter relating to themselves going before the King, as that would lend the King's officers an opportunity for interfering in the work of their guild; and hence they always take from the parties concerned sufficient security against their deviating from the decision arrived at, before they proceed to investigate a dispute; the understanding with the person standing security being that if the party deviate from the decision arrived at by the guild, he shall pay a stipulated fine, or he should not let him deviate from it. (*c*) '*Tribes*'—consist of persons who always move about in groups; *e.g.*, masons, temple-priests, and so forth. They would investigate the cases of disputes arising among themselves; and for the enforcing of decisions they shall appoint committees. The difference between these two ('Guilds' and 'Tribes') is that the former consists of persons following the same profession and they can act singly also, whereas *Tribes* always act collectively. And it is because the Tribes act collectively that the disputants are afraid of them. According to others however, the term '*Families*' stands for neutrals; and such persons, even though not members of the same guild, are conversant with all the ins and outs of the case, and as such capable of coming to a decision. (*d*) The term 'authorised person' stands for the Brāhmaṇa learned in the Vedas; it has been laid down that such Brāhmaṇas are entitled to speak on all disputed points of law. Such a person is superior to the foregoing, because of his learning. (*e*) The King's superiority rests upon his great power. It is for this reason that when a case has been decided by the learned King, there is no occasion for what is laid down in the following words—'If a party, even though

legally defeated, thinks that he has not been justly defeated, he shall be fined twice the amount of the suit, and the case re-opened' (*Yājñavalkya*, Vyavahāra, 306); this is what applies to other cases (decided by others). For in the case of these latter there may be some ground for asserting that 'the judges have not decided rightly'; but when the King himself has decided it, what can be said against it?

Another explanation of the term 'authorised person' is that it stands for the Brāhmaṇa who has been appointed by the King to act as his substitute. Similarly the ordinary householder also would be an 'authorised person,' so far as his own household-affairs are concerned,—this being in accordance with the declaration that 'the householder is master in his own house,' which means that he is free to deal with all disputes within his own household, up to the infliction of punishment,—specially with a view to proper discipline among his children and pupils; but he may deal with all cases, except the iuflicting of bodily punishment, or the doing of acts conducive to depravity. What is meant is that in the case of minor offences the householder himself acts like the King, while in that of serious offences, it is necessary to report to the King.

From all this it follows that there is no basis for the doubt raised by some people regarding the right of the Brāhmaṇa and others to pronounce judgments,—on the ground that the injunction contained in the present verse that the King 'shall look into the suits' precludes all other persons,—or, for the great trouble that they have taken to establish that right. Because the right of the several persons pertains to different kinds of cases. The King's right extends up to the infliction of punishments, while that of the Brāhmaṇa and others extends only up to the pronouncing of judgments,—this latter right is distinct from the former. Then again, the motive of the King in looking into cases consists in the proper administration of his kingdom, while that of the others lies only in settling doubtful points for the benefit of other people. So that there is no possibility of cross-purposes arising.

The '*suits of suitors*' consist in the settling of disputes. Whenever disputes arise between two persons, settlements should be brought about by the King by means of careful investigation. Otherwise if the parties come to an agreement themselves, where would be the supremacy of the King? —(2)

VERSE III

[HE SHALL LOOK INTO THE SUITS]—DAY AFTER DAY, ONE BY ONE,—FALLING AS THEY DO UNDER EIGHTEEN HEADS,—ACCORDING TO PRINCIPLES DEDUCED FROM LOCAL USAGE AND FROM THE SCRIPTURES.—(3)

Bhāṣya.

The first half of the verse describes the means of forming a decision, and the second mentions the number of the heads of dispute.

The verb '*shall look into*' of the preceding verse has to be construed with the present verse,—as also the noun '*the suits*'; the full sentence being 'day after day he shall look into the suits'; *i.e.*, every day he shall decide cases.

'*According to principles.*'—'Principles' are the means of coming to a decision; and they are of two kinds—(1) in the shape of evidence and (2) in the shape of custom. The means leading to decisions that are in the shape of 'evidence' are in the form of witnesses and so forth; and those in the form of rules are such as—(*a*) 'the investigation of a suit can be regarded as complete only when precise decision has been arrived at regarding its subject-matter.' A single witness, who is true to his oath, and who has been cited by both parties, who have also vouched for his veracity,—even though he may not have been examined by the members of the court,—becomes a reliable means of arriving at the right decision; but no decision can be arrived at on the strength of the words of any such single person as is not known to be truthful and has not been examined, as there is in the former case; and

hence such a single witness cannot be regarded as helping the forming of a decision, even though the persons investigating the case may be agreed upon it.

Customs also are of two kinds—*general* and *special*. These again are of two kinds—*congruous* and *incongruous*, in reference to places and times. As an instance of the 'Congruous' custom we have (*a*) the case where among certain people of the South, a childless woman, on the death of her husband, goes up to the pillar of the court of justice, and while there, if, on being examined by the officers of the court, she is found to be untainted and possessed of the necessary qualifications, she obtains her inheritance;—or (*b*) the case where among the people of the North, if food is given to a person seeking for a bride, then she becomes *betrothed* to him even though the actual words 'I shall give her to you' may not be uttered. And as an instance of the 'incongruous' rule, we have (*a*) the case where in some countries grains are lent out during the Spring, and double the quantity is realised during the Autumn,—or (*b*) when an article is mortgaged on the understanding that it shall be enjoyed by the mortgagee, even if the total amount of debt accruing become double of the price of that article, and the total from the very beginning is paid in gold, yet the enjoyment of it remains unmolested;—now all this is 'incongruous,' being incompatible with the law that 'the interest shall accumulate to only 80 per cent.' (Yājñavalkya, *Vyavahāra*, 37), and that 'the accumulated interest shall not exceed the double of the principal' (Manu, 8.151).

These customs based upon the nature of the countries affected are what are mentioned in the text by the words '*principles based upon local usage*'; and as regards the '*principles based upon scriptures*,' these are declared in the scriptures themselves. Of these latter some are rules that have been propounded by the writers themselves, while others only codify the actually existing state of things. As an instance of the rule propounded by the writers we have—(*a*) 'Facts are ascertained in accordance with written documents,

possession and witnesses,'—as says Manu (8.44) 'Just as the hunter infers the position of the prey by means of the drops of blood (so should the king infer the facts of a case).' Though no worldly usage can be regarded as authoritative as against the word of scripture-writers, yet in certain cases it becomes necessary to have recourse to the words of ordinary men of the world; *e.g.*, 'under such and such conditions such and such an ordeal should be had recourse to,' 'weight is to be attached to possession lasting for such a time.' Such rules, even though based upon ordinary usage, are included under '*principles based upon scriptures*.' But among such rules, those are to be regarded as authoritative which are found to have some support in the scriptural texts; while those that are found to be without such support are not to be so accepted. For instance, there is the rule regarding the order of words in documents—'By me, entreated by both parties, who am the son of so and so, this has been written by so and so—thus exactly shall the scribe write down' (Yājñavalkya, *Vyavahāra*, 88). In reality however, there would be no harm if the scribe were to write down his own name first—'I so and so, the son of so and so, am writing this.' Because the only purpose for which he writes all this is with a view to show that the document has been written by such and such a person; so that so long as the name of the scribe is put down, there is nothing objectionable in it. If the scribe is known, from other sources, to be a trustworthy person, then what is written by him is regarded as reliable ; so that if he were to omit the name of his family, and thus fail to indicate precisely who he is, whose reliability would the persons concerned investigate, on the basis of other sources of information? But if from his writing, or by some other means, the writer be recognised as a particular well-known scribe, then there would be no harm even if he were to omit his indicative characteristics. In this case, even if the scribe were to omit to write that 'this has been written by me, so and so,' there would be enough to indicate who the writer is. And it is in such cases that the examination

of the scribe comes useful; and he becomes counted among 'witnesses,' specially when there are few other witnesses. When however there are many trustworthy witnesses ready at hand, there is not much use in investigating the trustworthiness of the scribe.

Similarly there is another rule—'Documentary evidence is rebutted by documentary evidence, and witnesses (oral evidence) by witnesses; documentary evidence is superior to witnesses; hence witnesses are rebutted by documentary evidence.' (*Nārada*, 1.145). For this rule also there is no foundation. *For 'documentary evidence' is of two kinds:* (1) written by the party himself, and (2) written by another person. The latter again is of two kinds—(*a*) written by a scribe who volunteers to do the writing, and (*b*) written by an authorised scribe. The document written by another person again is, in every way, of the nature of a witness; so that there is no ground for the distinction made by the rule, in the words 'documentary evidence is superior to witnesses,' specially because the 'witness' has been thus defined (by Yājñavalkya, *Vyavahāra*, 87)—'The witnesses shall, with their own hands, write down their names, preceded by the names of their father, adding that I, so and so, am a witness.' Similarly, no reliability attaches to what has been written by a single man, just as it does not attach to a single witness. It might be argued that it is only when 'witnesses' set down their hands to something that they become 'documentary evidence.' But this difference cannot make the one 'superior' to the other. Because *trustworthiness* is the only ground for 'superiority'; and this trustworthiness is equally yet to be examined in both cases. It is for this reason that in a case when there is a conflict between the two kinds of evidence, the judge should accept that which is the more numerous of the two. 'Being authorised' also cannot be regarded as a ground of distinction; because even so, the 'superiority' could only consist in the fact that it is only one who has been tested that is 'authorised'; but as a matter of fact, all persons 'authorised' by the King are not necessarily

thoroughly 'tested.' If some one happened to be possessed of extremely high qualifications and were absolutely free from all defects, then he, even alone, could be accepted as sufficient corroboration. As for instance, the deeds of land-grants bestowed by the King are accepted as authoritative, even though written by a single *Kāyastha* scribe. In a case where there is documentary evidence written by the hand of the person who is not paying a debt, wherein he admits that 'I have received so much from this person, and so much has to be paid to him,'—if he should happen to deny it and say 'I have not received anything from him,'—then the party producing the aforesaid document wins the case outright, and there is no occasion for the appearance of any witnesses at all.

"It is only on the strength of the man's writing that it is concluded that the debt is admitted by him,—and subsequently also the same man asserts that he has not received anything ; now between these two assertions, on what grounds is the latter rejected in favour of the former, and not the former in that of the latter,—both of them being equally open to doubt, by reason of mutual contradiction ? In fact under such circumstances it is only right that other kinds of evidence should be called in."

This would be so, if there were equality (between the two assertions). As a matter of fact, however, the assertion 'I have not received anything' may be due to the man's avarice and such other causes ; whereas the assertion 'I have received such and such a thing' could never be made by any sane person without having actually received it. In the case in question, even if the man were to say that he has repaid the debt, but did not obtain the written acquittance receipt, either because a writer was not at hand, or because being engaged in some other business he was in a hurry,—even so there would be no need and occasion for the calling of any further evidence, in the shape of witnesses, etc.

As regards the dictum quoted above (from Nārada), it cannot set aside a conviction derived from the very nature of things.

For instance, it is often found that people go on repaying debts due to rich persons, and yet do not have the payments noted on the back of the document, the idea in the man's mind being either that 'so much I have paid to-day, and tomorow I shall bring in more and then have the total sum entered at the same time,' or that 'in a few days I shall repay the entire amount and then have the document torn off';—but when pressed by the rich creditor, he may be unable to clear off the entire debt, and the only amount paid remains what had been on the first day, the creditor would deny even that payment on the ground that the receipt was not given;—now in this case if the court were to insist upon the dictum that 'documentary evidence can be rebutted only by documentary evidence,'—then how could it take into consideration at all the possibility of force or fraud (on the part of the influential creditor)? for there is no possibility of any documentary evidence; and in this case, even though there is documentary evidence on one side, yet, for the purpose of coming to a right conclusion, other forms of evidence are called in; and the same could be done in other cases also. For instance, in a certain case, one of the parties (the debtor) might say—'trusting this man, I executed this deed for the entire sum, and the creditor told me that I may receive a part of the sum that day, as for certain reasons he was not in a position to pay the whole sum then, and that he would pay the balance the next day; but the sum paid on the first day was all that he gave me, and the balance was never paid'; and in this case there is certainly an occasion for the calling in of other kinds of evidence. And if the debtor can produce witnesses in corroboration of his statement, then the document (produced by the creditor) becomes impugned, and it becomes necessary for the creditor to prove that he did pay the balance the next day. If the conversation between the parties (regarding the part payment) were held in private (and there be no witnesses to corroborate the statements one way or the other),—then there comes the occasion for having recourse to ordeals. If however there be no full confidence in

ordeals,—on the ground of these being not always infallible,—then decision should be arrived at by means of oaths.

"If such be the case, then the document written by the man's own hand becomes untrustworthy, since it stands in need of corroboration by other kinds of evidence. And this is contrary to the dictum that 'even without witnesses, what is written by the man's own hand should be conclusive evidence.' It is on the analogy of this same reasoning that in a case where a person has not seen the sum being actually paid by the creditor, but in his presence the debtor has admitted that 'such and such an amount has been received by me from him,'—such a person is accepted as a real 'witness'; though in this case it is open to the debtor to say 'it was through my trust in the man that I admitted the payment.'"

This argument we have already answered by saying that mere incompatibility with a *Smṛti-text* cannot set aside the real facts of the case. In certain cases the aforesaid statement (of the debtor—that 'I repaid a certain sum but did not have it entered on the back of the document') could be wholly out of place; and in such cases, the document would certainly be accepted as reliable evidence. For instance, in a case where the document has remained in the creditor's hands for a long time, the question naturally arises—'if the debtor really repaid the debt, why did he not seek out the document and receive it back; such a matter cannot be neglected or overlooked for such a long time; and from this it is inferred that what the debtor states is a lie.' It is in view of this that it has been laid down that 'if there has been any wrongful force used in regard to any business, one should report it to the King either at once or within three days.' Again, in a case where there is mortgage, but the exact period of the mortgage is not definitely fixed, and dispute arises on that account, if there is a document written by the debtor, but without witnesses,—it is not open to the debtor to assert—'you said this (made this condition) at the time through your love (for the thing), but now please give up to me the mortgaged article'; nor would this be an occasion for his making the

statement referred to above—*viz.*, 'I executed the deed, the man said he would give me the sum mentioned therein, but he never actually gave it to me'; because if the debt was not advanced, why did he permit the creditor to retain and make use of the mortgaged article?

"If such be the case, then the evidence in the case would consist of the said possession accompanied by the document; while what the writers on law declare is that possession *by itself* is sufficient evidence; as asserted in such texts as—'Documents, witnesses, possession, etc., etc.' (Yājñavalkya, *Vyavahāra*, 22)."

Why is this objection urged against us, when we have already answered it? What is accepted as evidence is possession *for a definite period of time*; and not mere possession. What the texts state is—'Whatever is retained *for ten years*, etc.' (Manu, 8.147), and 'One loses possession of a landed property, if *for twenty years* he perceives and speaks of it as being actually possessed by another person' (Yājñavalkya, *Vyavahāra*, 24).

"What then is the exact meaning of the dictum that 'documentary is rebutted only by documentary evidence?'"

Others have explained this to mean (*a*) that when there is a doubt regarding the writer of a certain document, as to whether or not it has been written by a certain person, this can be ascertained only with the help of another writing obtained from that person;—(*b*) that where the deed has been written before a certain witness, the doubt as to whether or not it has been written by the man can be removed only by means of witnesses; as the latter are the only evidence possible in the case; so that in this case there is no use in producing another writing of the man;—(*c*) that in a case where the payment of the debt is being intentionally withheld, documentary evidence is superior to mere witnesses; because it is possible for witnesses to forget things, or to collude with one party or the other, or become tainted with some defect which would disqualify them as proper witnesses; as for the document on the other hand, this would be in charge of

the plaintiff and as such perfectly safe; and thus it is that documentary evidence is superior to witnesses. This is what is meant by the dictum that 'witnesses are rebutted by documentary evidence'; because even though the man may have forgotten a certain fact, if he sees some writing of his own bearing testimony to it, he is convinced of its being true; or when the witnesses are all dead, if their *writing* is recognised, it is accepted as evidence.

Other explanations have been supplied by *Bhartṛyajña*, and may be learnt from his own work.

Though it is true that in all cases Smṛti-texts form the source of authority, yet rules have to be laid down for meeting special cases; and it cannot be right to depend entirely on Smṛti-texts; specially because it cannot be said that the Smṛti-texts bearing upon legal proceedings are all based upon the Veda; because the winning or losing of cases deals with *well-accomplished* things (while the Veda bears upon things *to be accomplished*) and is amenable to Perception and other forms of cognition;—*e.g.*, that 'one who acts like this is defeated, while he who acts thus wins' is a well-accomplished fact. Even the few indications of these that are found in the Veda are to be regarded as being on the same footing as the assertion—'One desiring freedom from disease should eat the *Harītakī*' (which only describes a perceptible fact). The exact significance of such Injunctive Vedic passages has been discussed by us in the section on the 'Purification of things' (under Discourse 5, Verse 110 *et seq.*); hence we are not going to do the same thing over and again.

The objects of dispute fall within eighteen 'heads'; it is only with regard to these that disputes arise among men. Mutually nugatory acts are not conducive to the fulfilment of any useful purpose,—as we are going to show later on.

Each of these eighteen 'heads' is important by itself; as each by itself becomes the object of dispute, and no one of them is included in any other. The various ramifications of these are included under each head; if these ramifications were to be enumerated separately, there would be thousands of them.—(3)

II. The Eighteen Heads of Dispute enumerated

VERSES IV-VII

OF THESE THE FIRST IS (1) NON-PAYMENT OF DEBT; (THEN) (2) DEPOSITS, (3) SELLING WITHOUT OWNERSHIP, (4) JOINT CONCERNS, (5) NON-DELIVERY OF WHAT HAS BEEN GIVEN AWAY,—[4]—(6) NON-PAYMENT OF WAGES, (7) BREACH OF CONTRACT, (8) RECISION OF SALE AND PURCHASE, (9) DISPUTE BETWEEN THE OWNER AND THE KEEPER,—[5]—(10) DISPUTES REGARDING BOUNDARIES, (11) AND (12) ASSAULT, PHYSICAL AND VERBAL, (13) THEFT, (14) VIOLENCE, (15) ADULTERY,—[6]—(16) DUTIES OF MAN AND WIFE, (17) PARTITION, AND (18) GAMBLING AND BETTING;—THESE ARE THE EIGHTEEN TOPICS THAT FORM THE BASIS OF LAW-SUITS. [4-7].

Bhāṣya.

'Non-payment of debt' is regarded as '*first*,' foremost, only by reason of the order in which the several heads are found mentioned in the law-books. Or '*first*' may mean 'the most important,'—its 'importance' lying in the fact that it affects even those who live in the forests.

Connected with the 'non-payment of debt' is also the subject of the 'non-granting of the acquittance-receipt'; when, for instance, the debtor says to the creditor 'I have repaid your debt, now let me have the acquittance receipt.' This 'non-granting of the acquittance-receipt' is not the same as the 'non-payment of debt'; but though not directly denoted by that term, it is implied by it.

What are included under the head of 'non-payment of debt' are thus enumerated (by *Nārada*, 3.17)—'What debt is

payable and what non-payble,—when, how and to what extent? —as also the methods of delivery and receipt.'

Now 'payable debt' is that contracted by one's self, that contracted by his father, and by one whose property he inherits.

'Non-payable debt' is that contracted by one's self, if (along with the interest) it exceeds the double of the principal, or that contracted by his father in gambling, etc., as declared in the text—'That contracted by the son, or husband or father, etc.' (Says *Nārada*, 3.17)—'A woman may not pay the debt contracted by her husband, or by her son, unless she has promised to pay it, or if the debt be one contracted by her jointly with her husband.' Though all this is included under 'payable debt,' yet when it happens to be such as is contracted in gambling, etc., then by itself, irrespective of all other peculiar circumstances, it becomes 'non-payable'; but all this 'payability' or 'non-payability' is in relation to the person called upon to pay; and hence the names 'payable' and 'non-payable' may be taken as similar to the expression '*go-balībarda*' (*i.e.*, generally speaking, by itself, the debt is *payable*, but under special circumstances, pertaining to the person and the relationship to the original debtor, etc., it becomes *non-payable*).

'*To what extent*' (in Nārada's text) means—'up to the limit of the double of the principal'; the distinction here also being as before. If we read '*yatra*' (in Nārada's text), this term would refer to the *place* and *time* of payment; the idea being that the debt shall be repaid *where* it was taken; but if the creditor so wish it, it may be paid at another place also. The *time* of payment also should as nearly as possible be the same. As regards time, it has been said that there is no desire to repay debts during the Autumn, the most suitable time being either the Summer, when the harvest has been gathered in, or whenever an income is expected.

'*How*' (in Nārada's text);—*i.e.*, so far as possible, the entire debt shall be paid; if this be not possible, then by instalments, till the whole is cleared off; and lastly, in the event

of the debtor being entirely reduced to penury, he shall clear off the debt by service, as declared in verse 177 below.

'*The methods of delivery and receipt*,'—*i.e.*, the signature of witnesses, the execution of deeds and so forth.

'*Assaults, physical and verbal*' (*verse 6*);—the compound '*daṇḍavāchikē*' is formed in accordance with Pāṇini 5.4.106, the final '*ṭhan*' affix being added according to 5.2.115.

'*Duties of man and wife*' (*verse 7*);—the compound '*strīpumān*' is to be expounded as '*striyā sahitaḥ pumān*,'—the compound belonging to the same class as the compound '*shākapārthivaḥ*.' If it were formed as '*strī cha pumaṁshcha*,' the resultant compound would be '*strīpumsadharmaḥ*' (according to Pāṇini 5.4.77).—(4-7)

III. Constitution of the Court of Justice

VERSE VIII

TAKING HIS STAND UPON ETERNAL MORALITY, HE SHALL FORM HIS DECISION ON THE SUITS OF MEN WHO MOSTLY CARRY ON DISPUTES IN REGARD TO THE AFORESAID POINTS.—(8)

Bhāṣya.

The addition of the adverb '*mostly*' is for the purpose of indicating the importance of the said heads of dispute. As a matter of fact, there are several other points of dispute also; *e.g.*, (*a*) 'you gave me this house to live in; why then do you give it to another person before the lapse of a year?' This cannot be regarded as included under 'non-delivery of what has been given away'; because in this case there is no surrendering of ownership (which is a necessary condition in *gifts*); the dweller is only permitted to dwell in the house;—again, (*b*) 'you have made a window in your house in front of my platform.'

'*Taking his stand upon eternal Morality*';—Wealth and Pleasure are not 'eternal.' Or, the term 'eternal *morality*' may mean that he should follow that law or custom the beginnings of which cannot be traced; while he should not pay heed to such customs as may have been adopted only by the present generation; as such custom is *not eternal.*—(8)

VERSE IX

WHEN HE HIMSELF MAY NOT CARRY ON THE INVESTIGATION OF SUITS, HE SHALL APPOINT A LEARNED BRĀHMAṆA TO DO THE WORK OF INVESTIGATION.—(9)

Bhāsya.

The Brāhmaṇa who is thus appointed should be 'conversant with the eighteen points, well versed in the Science of Reasoning, fully learned in the Veda and the Smṛtis,—being called the Investigating Judge.'

If, either on account of being absorbed in some other more important business, or on account of his inherent incapacity, the king does not investigate the suits personally, then he should appoint a '*learned*' *Brāhmaṇa*. The 'learning' here meant is that pertaining to legal proceedings, and the man's appointment itself is indicative of his possession of that learning; because no man deserves to be appointed to do a work which he does not know. A knowledge of the Science of Morality also comes useful, for the purpose of precluding the possibility of wrong decisions being taken under the influence of love or hate. If the man is conversant with Morality, even though love or hate may be present in his mind, yet, through fear of the said Science of Morality, he does not allow himself to be misled; and it is thus that a knowledge of the Science of Morality comes in useful. As for the knowledge of legal procedure, its presence is already implied; when the man is appointed to do the work of deciding legal cases, it follows that he is possessed of that knowledge without which such cases cannot be decided. The injunction regarding the impropriety of the man knowingly perverting his judgment is contained in other texts; and with a view to avoiding this our author is going later on to lay down other measures: *e.g.*, 'Three persons learned in the Veda, and the learned man appointed by the king, etc.' (*verse* 11). As for the knowledge of Sciences other than these, if it were made a necessary qualification for the man appointed to investigate legal cases,—such knowledge could only be regarded as meant for some unseen transcendental purpose.

'*Niyojyo vidvān syāt*' would be the right reading (in place of *tadā niyuñjyād vidvāṁsam*'); because '*niyuñjyāt*' is grammatically wrong, the right form being '*niyuñjīta*'; as Kātyāyana's Vārtika on Pāṇini 1. 3. 66 ordains the *Ātmanēpada*

ending for the root '*Yuj*' preceded by prepositions ending in a vowel.—(9)

VERSE X

THAT MAN, ACCOMPANIED BY THREE ASSESSORS, SHALL ENTER THE EXCELLENT COURT, AND EITHER SEATED OR STANDING, SHALL INVESTIGATE THE SUITS ON BEHALF OF THE KING.—(10)

Bhāṣya.

'*Assessors*';—though the caste of these persons is not specified here, yet in view of the *Brāhmaṇa* being mentioned later on (in 11), and also of the phrase '*along with Brāhmaṇas*' (in *verse* 1 above), it follows that these also should be *Brāhmaṇas*.

The number is mentioned as '*three*' simply with a view to preclude the possibility of only one or two men being appointed; what is meant is that three or more men shall be appointed. This we shall explain in detail under the section dealing with *Witnesses*.

'*Shall enter the excellent Court.*'—Though entering the court as the king's representative, he shall stand or sit on such a seat as is proper for himself. The repetition of 'standing or sitting' serves either to indicate the right posture for him, or to preclude other postures. The meaning of this is that he should not sit upon the king's throne.—(10)

VERSE XI

THAT PLACE, WHERE THREE BRĀHMAṆAS LEARNED IN THE VEDA SIT, AS ALSO THE LEARNED BRĀHMAṆA APPOINTED BY THE KING,—THEY REGARD AS THE 'COURT OF BRAHMAN.'—(11)

Bhāṣya.

It has been declared that 'having entered the Court, he shall look into the cases.' As regards the word '*sabhā*,' in

ordinary language it is used in the sense of a particular apartment of the house; *e.g.*, in the Mahābhārata it is said that the 'excellent gold-burnished *sabhā* was built by Maya';—sometimes it is also used in the sense of an assemblage of particular men. In order to preclude these two meanings of the term, the author states the definition of the '*Sabhā*,' 'Court,' meant in the present context.

That place where three Brāhmaṇas learned in the Veda are brought together, as also the learned Brāhmaṇa appointed by the king,—or the person mentioned in the preceding verse,—that is the '*Sabhā*' meant here.

The name of '*Brahman*' has been mentioned for the purpose of extolling the Court; the sense being that 'the Court constituted as here stated is as unexceptionable as that of Brahman himself.'—(11)

VERSE XII

IN A COURT WHERE JUSTICE IS PIERCED BY INJUSTICE, AND THE MEMBERS OF THE COURT DO NOT REMOVE THAT DART, THESE MEMBERS ALSO BECOME PIERCED.—(12)

Bhāṣya.

[The Bhāṣya has nothing to say on this verse.]

VERSE XIII

ONE SHOULD EITHER NOT ENTER THE COURT AT ALL, OR HE SHOULD SPEAK OUT WHAT IS EQUITABLE; ONE WHO EITHER SPEAKS NOTHING, OR SPEAKS FALSELY, BECOMES TAINTED WITH SIN.—(13)

Bhāṣya.

What is asserted here forbids two things—(*a*) he who has accepted the appointment (of a Judge) should not be unjust, and (*b*) he should not slur over the injustice committed by others; since both these involve sin.

'*Speaks nothing*';—*i. e.*, he who remains silent when another person is committing an injustice,—or he who interferes in the investigation and then says what is not compatible with the scriptures or with justice—'*becomes tainted with sin*'—*i.e.*, comes to partake of the sin. Hence the man should not entertain the hope that—'it is another judge who is judging wrongly, and he may incur sin, I am only sitting silent and indifferent, why should I be affected by the sin?'

By the prohibiting of entrance into the Court what is forbidden is the accepting of the appointment of a judge to investigate cases; so that what is meant by the sentence '*one should not enter the Court*' is that 'he should not accept the appointment of the investigating judge, or, if he does accept it, he should speak out what is just.'

This has been taken to imply that when even an unauthorised person happens to be present, if he finds that the judges are acting wrongly, he should not remain silent. To this end we have the assertion—'Authorised or unauthorised, the man who knows what is just should always speak out' (*Nārada* 2.2). If he fear molestation at the hands of the king's officers as to why he should speak, when he is not authorised to do so,—then he should go away from that place. In support of this we have the following assertion—'When a wrong is being inflicted upon a weak person, if one does not save him from it, he incurs sin, *only if he has the power to save him*' (Gautama, 21.19.—(13)

VERSE XIV

WHERE JUSTICE IS DESTROYED BY INJUSTICE, OR TRUTH BY FALSEHOOD, WHILE PEOPLE ARE LOOKING ON,—THERE THE MEMBERS OF THE COURT ALSO ARE DESTROYED.—(14)

Bhāṣya.

'*Justice*' is decision arrived at in strict accordance with the scriptures, reasoning and local customs;—if this is

'*destroyed by Injustice*,'—*i. e.*, set aside by the reverse of justice,—by either the plaintiff or the defendant;—similarly where '*truth is destroyed by falsehood*'—by the witnesses; —and all the time the judges and the other people in the Court remain looking on, and do not try to draw out the real facts, —then these men also are '*destroyed*,'—*i. e.*, become as good as dead corpses. This is meant to be a deprecation of the judges, etc.

For these reasons the members of the Court shall not connive at any misrepresentations being made by the parties or by the witnesses.

In as much as the mention of 'Justice and Injustice' only, or of 'Truth and Falsehood' only, would have been sufficient, the mention of both would have to be regarded as serving the purpose of filling up the metre; hence it has been explained as referring to two distinct sets of persons (the parties and the witnesses).—(14)

VERSE XV

JUSTICE, BLIGHTED, BLIGHTS; AND JUSTICE, PRESERVED, PRESERVES; HENCE JUSTICE SHOULD NOT BE BLIGHTED, LEST BLIGHTED JUSTICE BLIGHT US.—(15)

Bhāṣya.

Judgment should not be perverted, through fear; because justice, when violated, '*blights*'—our prosperity, as also the prosperity of the sinful party and his helpers.

Similarly, when 'preserved,' justice removes dangers from all sources; so that even though angered, the party (defeated) cannot do any harm.

'*Hence*'—*i. e.*, knowing this, that happiness and unhappiness are based upon morality, one should not violate morality (or justice). If we violate justice, justice shall, like an enraged serpent, strike back at us; so *lest justice blight us* —*i. e.*, with a view to saving ourselves,—we should preserve justice.—(15)

VERSE XVI

FOR JUSTICE IS THE REVERED 'VṚṢA,' BULL; AND HE WHO COMMITS THE VIOLATION, 'ALAM,' OF IT, HIM THE GODS REGARD AS 'VṚṢALA,' LOW-BORN; HENCE ONE SHALL NOT VIOLATE JUSTICE.—(16)

Bhāṣya.

By means of the explanation of the term '*vṛṣala*,' the judge who perverts justice is censured. The title of '*vṛṣala*' (low-born) does not apply to one who is so by caste—*i.e.*, the *shūdra*,—but he who '*commits the violation*' ('*alam*') of the *Bull*, '*vṛṣa*,'—*i.e.*, he who showers all blessings;—the particle '*alam*' denoting *violation, perversion.*

The opinion that such a person is '*vṛṣala*' is held by the gods; if it is taken as denoting a *caste*, it may be so taken; but the gods are more authoritative, and they accept the denotation of the term as here explained.

The mention of the '*gods*' is only a commendatory exaggeration.

For the reason here explained, in all such texts as—(*a*) 'no *vṛṣala* should come in during the performance of a *shrāddha*,' or 'the *vṛṣala* thief should be killed,'—the term '*vṛṣala*' should be taken as standing for the Brāhmaṇa that perverts truth.

Consequently one should not violate Justice, lest he become tainted with the character of the '*vṛṣala*'; the application of this character to the Brāhmaṇa being a form of deprecation.—(16)

VERSE XVII

MORALITY (JUSTICE) IS THE ONLY FRIEND WHO FOLLOWS ONE EVEN AFTER DEATH; EVERYTHING ELSE PERISHES ALONG WITH THE BODY.—(17)

Bhāṣya.

What has been declared in verse 15 is that Morality or Justice should not be perverted, through *fear*; and the present verse declares that it should not be perverted through *love* either.

In as much as Morality (Justice) is the 'only friend,' it is for this that one should cultivate it. Ordinary men often abandon their friends even during life; even in the case of those that are very great friends, the friendship lasts only till death. Morality on the other hand, follows the man even when dead. Therefore even for the sake of friendship, one should not either pervert justice or connive at its perversion.

In this sense there is the following saying—'Wife, son, friends, riches and wealth—all these are lost when the man's body is destroyed; it is Morality alone which never abandons him; hence one might abandon his sons and wife, but never Morality.'

Everything else, in the shape of wife, son and so forth,—except Morality—perishes with the body; *i.e.*, except Morality nothing is able to save the man on death; so that even for the sake of friends and relations, Morality should not be abandoned.—(17)

VERSE XVIII

ONE QUARTER OF THE INJUSTICE FALLS ON THE MAN WHO COMMITS IT, ONE QUARTER ON THE WITNESS, ONE QUARTER ON THE MEMBERS OF THE COURT AND ONE QUARTER ON THE KING.—(18)

Bhāṣya.

The judges should not entertain any such idea as the following—'Between the plaintiff and the defendant, one or the other is taking what belongs to the other,—so that he will incur the sin of wrongful possession of the land,—we are not committing the act,—why then should we be participators

in the sin?' Because as a matter of fact, the said sin is divided into four parts.

This verse is a purely supplementary exaggeration; because in reality the sin committed by one man does not go to another. What happens then is that on the judges also falls the sin of transgressing the law that forbids unjust decisions. On the king, though he does not personally investigate the case, there does fall the sin resulting from the sinful act of the judges appointed by him and acting as his representatives. Or if, on being apprised, by the defeated party, of the unfair dealings of the authorised judges, he does not punish the dishonest officer, and does not take steps to come to a just decision, then also he becomes a participator in the sin. Or, the '*King*' in the text may be taken as standing for the judge appointed by him; the sense being that when the king himself decides the case wrongly, the sin falls upon him, whereas when his representative does so, the sin falls upon the latter. —(18)

VERSE XIX

WHERE, HOWEVER, THE PERSON DESERVING OF CENSURE IS ACTUALLY CENSURED, THERE THE KING BECOMES SINLESS, THE MEMBERS OF THE COURT BECOME FREED, AND THE SIN FALLS UPON THE PERPETRATOR.—(19)

Bhāṣya.

The same idea is stated conversely.

Where the guilty person is not able to hide his guilt, and his guilt is duly exposed, then everything turns out to be right.

From verse 14 onwards we have a set of supplementary exaggerations, containing praises and condemnations indicating the good and bad results,—put forward for the purpose of forbidding the actual committing of injustice, as also the conniving at it (being committed by others).

VERSE XX

EVEN A SO-CALLED BRĀHMANA, WHO MAKES A LIVING BY HIS CASTE ONLY, MAY, AT PLEASURE BE THE PROPOUNDER OF THE LAW FOR THE KING,—BUT NOT A SHUDRA UNDER ANY CIRCUMTSANCES.—(20)

Bhāṣya.

It has been said above (under verse 10) that the king shall decide cases helped by Brāhmaṇas and by three men well versed in council. Now, in as much as the caste of these councillors has not been specified, it might so happen that Shūdras might enter the Court, and being 'councillors,' it would be permissible for them to decide cases, and being possessed of cultured minds, they might pronounce their opinions on matters relating to the Law ; specially in all legal proceedings a knowledge of Smṛti-texts is not essential, on account of not possessing which the *Śhūdra* could be precluded from pronouncing judgments. As a matter of fact, grounds of victory and defeat (in legal proceedings),—such as witnesses and other kinds of evidence—are such as are amenable to the ordinary means of knowledge. For instance, a man possessed of cultivated intelligence can easily find out that 'such and such a person is a right witness, and not related, by any relationship, to the party citing him,' or that 'such another person is not a right witness, having several times been found to have lied'; and such matters are not cognisable means of *Smṛti texts* only.

Thus then the present verse contains the prohibition of a possible contingency.

Nor is there any definite rule regarding the caste of the 'Councillor,' as there is in regard to that of the 'Priest'; *e.g.*, having declared that 'he shall with them (the Councillors) consider the questions, etc., etc.' (7.56), the text does not say that 'he shall consider these, with the Brāhmaṇas.' Thus the meaning of the verse comes to be this—'even though a *Shūdra* might learn up bits of Law, and be a Councillor or an officer for inflicting punishments, yet he shall not pronounce any

opinion on the merits of cases being investigated in the King's Court."

What is said in the first half of the verse is to be explained as supplementary to the above prohibition. Because it cannot be asserted, in any case, that the Brāhmaṇa, who makes a living by his caste and is entirely devoid of learning and other qualifications, should be a propounder of the Law. Hence, when we come to examine its exact significance and form, the affirmation (contained in the first half of the verse) is found to stand on the same footing as the assertion 'eat poison, but do not eat in his house,' where also the affirmation ('eat poison') is supplementary to the prohibition, and not a real affirmation at all.

It is for this reason that the author has added the term '*kāmam,*' '*may, at pleasure;*' the very use of this term deprives the sentence of its injunctive character.

Other people offer the following explanation:—"Inasmuch as the Brāhmaṇa has been specifically declared to be employed as the Propounder of the Law, in such texts as—'the learned Brāhmaṇa shall be appointed, etc.,'—this in itself excludes all the other three castes, the Kṣattriya and the rest; so that what the prohibition of the *Shūdra* in the present verse means is that in the absence of *Brāhmaṇas*, the *Kṣattriya* and the *Vaishya* may be appointed (but never the *Shūdra*)." The rest of it they explain, as above.

'*Who makes a living by his caste only;*'—the term '*mātra,*' '*only,*' has a restrictive force; the meaning being 'he who lives only on the strength of his Brāhmaṇa-caste, and not by learning and other qualities, being absolutely devoid of all Brāhmanical qualifications.

The term '*bruva,*' '*so-called,*' is deprecatory.—(20)

VERSE XXI

THE KINGDOM OF THAT KING FOR WHOM THE INVESTIGATION OF LAW IS DONE BY A SHUDRA, WHILE HE HIMSELF IS LOOKING ON, SUFFERS, LIKE THE COW IN A MORASS.—(21)

Bhāṣya.

This is a supplementary declaration to the foregoing Injunction.

The construction is—'That king for whom the '*investigation of law*'—*i.e.*, decision on legal cases—is made by a *Shūdra* duly qualified by learning, etc.,—his kingdom,—people, subjects—'*suffers*'—is destroyed—'*like the cow in a morass*;'—'*pashyataḥ*'—'while he is looking on.'—(21)

VERSE XXII

THAT KINGDOM WHERE THERE IS A MAJORITY OF SHUDRAS, WHICH IS INFESTED WITH NON-BELIEVERS AND DESTITUTE OF TWICE-BORN PEOPLE, QUICKLY PERISHES ENTIRELY, BECOMING AFFLICTED BY FAMINE AND DISEASE.—(22)

Bhāṣya.

Like the preceding verse this also is a supplementary declaration.

From the context it is clear that '*the majority of Shūdras*' is meant with reference to the persons pronouncing judgments upon disputed cases; and the meaning is that—'where among persons deciding cases there is a majority of *Shūdras*, such a kingdom *perishes quickly*, through sufferings caused by famine and disease'; and it follows that from the destruction of the kingdom follows that of the king also.

'*Infested with non-believers*,'—*i.e.*, inhabited by such persons as are materialists, denying the existence of other worlds.

'*Destitute of twice-born people*';—'non-believers' cannot be regarded as a class distinct from that of *Brāhmaṇa* and the rest; as that would lead to a cross-division; as has been declared thus—'Brāhmaṇas and the rest come to bear the titles of *physicians*, *traders* and so forth.' Or, the expression '*destitute of twice-born people*' may be taken to mean 'where twice-born persons are not consulted and trusted in connection with difficulties relating to the Law.'—(22)

IV. The Commencement of Trials

VERSE XXIII

HAVING OCCUPIED THE JUDGMENT-SEAT, WITH HIS BODY COVERED AND MIND COLLECTED, HE SHALL SALUTE THE GUARDIAN-DEITIES, AND THEN PROCEED WITH THE INVESTIGATION OF SUITS.—(23)

Bhāṣya.

'*Judgment-seat,*'—that seat upon which the pronouncing of judgments is the principal work done. When he is seated upon his royal throne, the king regards 'wealth' as conducive to the prosperity of the kingdom, to be the most important matter, even in preference to 'morality'; but when he is engaged in deciding suits, he regards 'morality' or 'Justice' as the most important thing;—this is what is implied by the name '*judgment-seat,*' which does not mean that 'morality' or 'Justice' is a quality of the 'seat.'

'*With his body covered,*'—*i.e.*, having his body covered up with cloth and such other things.

'*He shall salute the guardian-deities,*'—bow down to the eight 'Guardians of the People, Indra and the rest';—'*he shall proceed with the investigation of suits.*'

These two acts—covering up of the body and saluting the Guardian deities—are laid down with a view to some transcendental result.

'*With mind collected,*'—with his mind concentrated, not turning towards any other thing. This serves a visible purpose.

Or, the phrase '*with collected mind*' may be taken as modifying the verb 'salute.'

Though what is asserted here appears to have been already said before, yet, in as much as the treatise is a metrical one, repetition cannot be very strongly objected to.

In '*Lokapālēbhyaḥ*' '*to the Guardian Deities*,' the Dative ending denotes the *recipient of a gift*; since under the *Sūtra* dealing with the Dative, it has been held (by the *Vārtika*) that that also is a 'recipient' for whose sake a certain act is done; *e. g.*, '*shrāddhāya nigṛhṇate*' ('He keeps himself in check for the sake of the performance of Shrāddhas'), '*patyē shētē*' ('Lies down for the sake of her husband'). Nor can the said assertion be regarded as restricted to the two roots here mentioned (in the two examples); as no such restriction is mentioned in the *Bhāṣya.*—(23)

VERSE XXIV

UNDERSTANDING BOTH 'DESIRABLE' AND 'UNDESIRABLE' TO BE ONLY 'JUSTICE' AND 'INJUSTICE,' HE SHALL LOOK INTO ALL THE SUITS OF THE SUITORS, ACCORDING TO THE ORDER OF THE CASTES.—(24)

Bhāṣya.

'*Justice and Injustice*' *alone* are desirable and undesirable. It is not that the 'desirable' consists in the obtaining of cattle, gold and other things, or that the 'undesirable' in the reverse thereof; in fact it is 'Justice' that is 'desirable' and 'Injustice' that is 'undesirable' ;—'*understanding*' this —*i.e.*, having come to this conclusion in his mind,—'*he shall look into the suits.*'

Or, the text may mean that the king shall examine what is 'desirable,' and what is 'undesirable,'—and also what is 'Justice' and what is 'Injustice.' That is, he should realise the importance of 'Justice' and the unimportance of what is merely 'desirable;' or that when the element of 'undesirability' is very large, and that of 'Injustice' very small,—there he shall avoid the former;

because it is possible for a slight 'Injustice' to be set aside by the larger 'desirable' factor through gifts and expiatory rites.

In the event of several suitors coming up at the same time, he shall take them up in the order of their castes; but this order of investigation based upon castes is to be observed only when the troubles of all the suitors are of the same degree; when, on the other hand, the business of the lower caste is very urgent or very important, then this should be taken up first, in accordance with the maxim 'he whose trouble is urgent, etc., etc.'; and in this case the order of the castes is not to be strictly observed. It has already been said that the investigation of cases is for the purpose of maintaining order in the kingdom; so that the rules laid down need not always be followed literally.—(24)

VERSE XXV

HE SHALL DISCOVER THE INTERNAL DISPOSITION OF MEN BY EXTERNAL SIGNS: BY VARIATIONS IN THEIR VOICE, COLOUR AND ASPECT, AS ALSO BY MEANS OF THE EYE AND BY GESTURES.—(25)

Bhāsya.

What the verse means is that in course of the investigations the veracity or otherwise of witnesses should be found out by means of Inference also;—and the mention of 'voice,' etc., is only by way of illustration; what the meaning therefore is, is that it shall be ascertained by means of such sure indications as may be possible, and not necessarily only by 'voice' and other things mentioned here; for the simple reason that these latter are not always infallible; *e. g.*, in many cases persons who are not used to the presence of great men become flurried, even though they be quite truthful; while those that are pert manage to hide their real feelings.

The compound '*svaravarṇeṅgitākāraiḥ*' is to be expounded as—by the *ākāra*—variations in—their '*svara*,' 'voice'—

'*varṇa*' 'colour'—and '*iṅgita*,' 'aspect';—the 'change' referred to being modifications undergone by men's ordinary 'voice' and the rest.

By means of these he shall '*discover*'—ascertain—the '*internal disposition*'—intention—'*of men*'—of suitors and witnesses.

The 'change of voice' occurs in the form of *faltering*, being *choked with tears* and so forth;—that of '*colour*' in the form of sudden changes of complexion and so forth;—that of '*aspect*' in the shape of perspiration, trembling, thrilling of hairs and so forth.

By means of the eye;—*i. e.*, by suddenly casting on them an angry look.

'*By gestures*,'—*i. e.*, by the movement of the hands, the eye-brows and so forth.

It is a fact of common experience that voice and the rest, if carefully watched, disclose the most hidden feelings;—the fact of these being indicative of hidden feelings being well known among men, as we find in ordinary experience.—(25)

VERSE XXVI

THE INNER MIND IS INDICATED BY SUCH VARIATIONS AS THOSE OF ASPECT, GAIT, GESTURE, SPEECH, AND BY CHANGES IN THE EYE AND THE FACE.—(26)

Bhāṣya.

What this verse does is to support, by ordinary experience, what has gone in the preceding verse; hence there is no repetition.

'*Ākāra*' is that which changes, *variations*; such as *aspect* and the rest.

'*Aspect*' has already been explained; the plural number is used in view of there being numerous individual aspects.

'*Gait*,'—this is in addition to what has gone in the preceding verse; it means the ordinary gait of a man being tripped or otherwise altered.

'*Speech*'—inconsistent and contradictory statements.

'*Changes in the face*'—the mouth being parched and so forth.

The rest has all been explained under the previous verse.

By means of the variations of all these the innermost heart is indicated even in ordinary life; such in brief is the meaning of the verse.—(26)

V. Protection of the Interest of Minors

VERSE XXVII

THE KING SHALL TAKE CARE OF THE PROPERTY OWNED BY A MINOR, TILL SUCH TIME AS HE MAY RETURN FROM THE TEACHER'S HOUSE, OR TILL HE MAY HAVE PASSED HIS MINORITY.—(27)

Bhāṣya.

An objection is raised—"The subject that was introduced was the investigation of suits; where then was the occasion for the protecting of the property of minors ?"

Answer.—This subject has been introduced here, just with a view to show that the property of minors does not come within the scope of legal proceedings; it has to be protected by the king, like his own property; otherwise the minor's uncles and other relatives would quarrel among themselves, each asserting—'I shall take care of it.' There is no connection of this subject with the present context. It has had to be introduced here,—and not along with the exclusive 'Duties of the King,'—because in regard to this people may have the notion that even such property may form the subject of legal proceedings.

'*Bāladāyādi*'—that of which a minor is the '*dāyāda*,' *i.e.*, *owner*, in which sense the term is used here. The property owned by minors shall be taken care of by the king, till such time as he may return from the teacher's house, or till he may have passed his minority. This second alternative of passing the minority is meant for those who pass their childhood in their own home (and are not handed over to an *Āchārya*). In the case of one however

who has entered the teacher's house as a Religious Student, even though he may have passed his minority, his property shall have to be looked after until he returns from the teacher's house. Or, the meaning may be that in the case of twice-born persons, the 'return' shall be the limit, while in that of others, it shall be the 'passing of minority.'—(27)

VERSE XXVIII

THERE SHALL BE SIMILAR PROTECTION IN THE CASE OF BARREN WOMEN, OF SON-LESS WOMEN, OF WOMEN DEVOTED TO THEIR HUSBANDS, AND OF WIDOWS FAITHFUL TO THEIR HUSBANDS,—WHEN THEIR FAMILY IS EXTINCT, AND WHEN THEY ARE IN DISTRESS.—(28)

Bhāṣya

Whoever may be without a protector, that person's property shall be taken care of by the king; the 'barren' women and the rest being mentioned only by way of illustration. It is only thus that the 'protection of the people' becomes accomplished. The preceding verse lays down the period of time during which the said protection of the property is necessary.

'*Vashā*'—barren woman.

'*Sonless woman*'—one who has no son, or whose son is incapable, or whose son is in a bad condition.

Between *vashā* and *aputrā* we have the copulative compound.

"The *barren woman* also is *sonless*."

True, but both have been mentioned for the purpose of showing that even though her husband be alive, the said woman may be looked after; as on account of her being superseded (by another wife taken by her husband), her husband may neglect her.

'*Whose family is extinct*';—this is added with a view to indicate those who have no protector in the shape of husband's younger brother, or paternal or maternal uncle, and

being women, are themselves incapable of looking after their own property,—and whose other relations are jealous of her property. Otherwise, as a rule, the character and property of women should be looked after by her relations; as has been thus declared—'On the husband lies the burden of supporting and protecting the woman, for which he is capable; when the husband's family becomes extinct, and there is no man left and no standing, and there are no Sapiṇḍas even left, her father's people become her protectors; when both families are extinct, the king is the supporter and protector of the woman' (*Nārada*, 13-28 to 29).

When the woman herself is, somehow, capable of taking care of herself, then there is nothing done by the relations; it is in view of this that the text has added—'*of women in distress*';—this epithet indicating *inability*. Others have explained the term '*women in distress*' to mean 'those whose husbands are in distress';—even a woman whose husband is alive becomes a fit object for the king's care, if her husband is incapable of taking care of her. This applies to the case of women in whose family there are no men left to take care of them. The epithet '*whose family is extinct*' thus means 'those who have no *family*, *i. e.*, relations.'

Others have explained the term '*niṣkulā*' to mean the *misbehaved woman*; of those women also the property acquired by means of their beauty has to be protected by the king.

According to this explanation the term '*nīṣkulā*' has to be taken by itself (and not as qualifying the other terms).

'*Widows faithful to their husbands*';—'*vidhavā*,' 'widow,' is one whose husband is dead;—'*dhava*' being a synonym for 'husband'; and she who is deprived of the *dhava* is '*vidhavā*,' '*widow*.' Till such time as she remains faithful to her husband, she deserves to have her property looked after by the king. In the event of her being unfaithful, she does not deserve to have any property at all, as we read in another *Smṛti text*—'She who is bent upon doing injury, who is devoid of modesty, who wastes money, who is addicted to misconduct—such a woman does not deserve to have

property.' Such a woman is to be banished; and this 'banishment' shall be only in the form of being driven away from the main apartment of the home, and not in being driven away entirely; because even in the case of such women as have become outcasts the scriptures have laid down that they shall be provided with a separate dwelling-house, clothing and food:—'In the case of outcast women also, this same action should be taken; clothing, food and water should be provided for them and they should live near the house.' In view of this, wherever we find an injunction regarding the *banishment* of such women,—*e.g.*, in such texts as 'the woman's entire property, etc., etc.,'—the 'banishment' should be understood to be of the nature just explained. And she deserves to retain what she may have saved from the food that is granted her; this the relatives shall not take away.

So far as the present treatise (of Manu) is concerned, in regard to such women what has been prescribed is *supersession*, and not the confiscation of property; as has been declared (under 9. 80)—'She who drinks wine, misbehaves, or is disobedient, or diseased, or mischievous, or wasteful, shall always be superseded.' Hence on the strength of Manu's text, the above-quoted text as to the unfaithful wife not deserving any property has to be explained as follows:—"Such a woman shall not receive that property which she should have received on account of her supersession; that is, she shall not receive what has been enjoined as to be given to her in the following text—'To the superseded wife shall be given a compensation for her supersession.' But what may have been given to her before that shall not be taken away from her."

Our opinion however is that in the case of the woman who is inimical to her husband, or addicted to misbehaviour, confiscation of property is only right and proper; since in Manu also (9.78) it has been declared that—'She who disregards her husband when she is maddened, or drunk, or diseased, shall be abandoned for three months, having been deprived of her ornaments and clothes';—*i.e.*, she shall be

deprived of her ornaments and clothes before being abandoned.—(28)

VERSE XXIX

WHILE THESE WOMEN ARE ALIVE, IF THEIR RELATIVES SHOULD APPROPRIATE THEIR PROPERTY,—ON THEM THE RIGHTEOUS KING SHALL INFLICT THE PUNISHMENT OF THIEVES.—(29)

Bhāṣya.

This 'punishment of thieves' has been laid down for those relatives who should appropriate the property of women. They appropriate her property in manifold ways; giving out, for instance, that—'she is not mistress of herself as regards what she gives away and what she enjoys,—I am the real owner of the property.'

It is in view of the possibility of people thinking that such misappropriators are not 'thieves' that the text lays down the 'punishment of thieves' for them.

'*While they are alive, if the relations*'—brother-in-law and others—'*should appropriate their property,—on them the king shall inflict punishment,*'—shall punish them.

The 'punishment of thieves' is going to be described later on (verse 334)—'With whatever limb a thief operates against men, each of those limbs the King shall cut off, in order to prevent the repetition of the act.'

What the verse means is that the property of helpless women should be specially guarded against her own relations; guarding against thieves being the duty that has been laid down for the King as owing to the entire kingdom.—(29)

VI. Unclaimed Property

VERSE XXX

PROPERTY, THE OWNER WHEREOF HAS DISAPPEARED, THE KING SHALL KEEP FOR THREE YEARS; UP TO THREE YEARS THE OWNER MAY RECEIVE IT; BUT AFTER THAT THE KING (SHALL TAKE IT).—(30)

Bhāṣya.

When some one has lost something,—it having dropped on the ground while he was going along the road, or in the forest,—and the conservator of the forests, or some other official of the King, finds it and brings it to the King,—the King shall arrange for its safe keeping and have it kept exposed to view at the royal gate or on the public road, and made it known by beat of drum if any one has lost anything; or he shall have it kept in charge of keepers on the spot where it was found. For three years he shall thus keep it.

Then, before the lapse of three years, if some one reports with proofs that the property belongs to him, then it should be made over to him, after deducting the sixth part of it, which is said (in verse 33) to be the King's share; and after the lapse of three years the King shall take the property into his own treasury.

That '*riktha*,' 'property,' is said to be '*praṇaṣṭasvāmika*,' of which the owner has '*disappeared*'—*i.e.*, cannot be traced.

'*Tryabdam*' denotes the *aggregate of three years*; the feminine affix being absent, just as it is in the compound '*trivarṣam*.' The term '*abda*' is synonymous with 'year.'

'*Shall keep*'—shall have it deposited.

'*Up to three years*,'—*i.e.*, before the period of three years is over,—'*the owner may receive it*,'—assert his ownership.

The term '*arvāk*' '*up to*' denotes *limit*, and indicates priority of time or place.

Others have explained the sentence '*the king shall take it*' to convey the permission to him to enjoy the property. What these people mean is that even after the lapse of three years, it would not be right for the King to 'take' or possess what belongs to another person; and hence what is meant is that after the lapse of three years, if the rightful owner does not turn up, the King shall enjoy the usufruct of the property.

But how will these people explain the verse 'Whatever an owner sees enjoyed by others during ten years, and though present, says nothing, that he shall not recover' (8.147)? Further, if it be asserted that the 'taking away' of another man's property cannot be right,—then the *using* also of such property cannot be right. Specially as another man's property in the shape of clothing and the like, becomes unfit by use. For these reasons it is only right that the mention of 'taking away' should be taken to mean actual *possession*; specially as *enjoyment*, which is the fruit of *possession*, would be present (according to the other view also). Then again, what sort of 'enjoyment of usufruct' would there be in the case of such property as the elephant, the house and the like?

Thus then, there is no reason for abandoning the direct literal meaning of the words; specially as the root '*hṛ*,' 'to take away,' has often been found to be used in the sense of *possession*, as in such phrase '*riktham harēt*,' 'shall take possession of the property.' Hence what the sentence means is that after three years the King shall 'take'—*i. e.*, take possession of— the property.—(30)

VERSE XXXI

HE WHO SAYS 'THIS IS MINE' SHOULD BE QUESTIONED IN PROPER FORM; AND THE OWNER OUGHT TO RECEIVE THE PROPERTY AFTER HAVING CORRECTLY DESCRIBED THE COLOUR, THE NUMBER AND OTHER DETAILS REGARDING IT.—(31)

Bhāṣya.

The author explains in what manner the rightful owner shall establish his ownership over the lost property.

Whenever any one comes and says 'this is my property,' '*he should be questioned in proper form*.'—'*Questioned,*' *i.e.*, examined.

"What is the *proper form* of questioning?"

The questioning could be done in the following manner:—What is the article that has been lost? Of what colour? Of what size? What is the number of things? Was it dropped or not dropped? If it was dropped, at which place was it dropped? Whence did you obtain it?

If he gives a correct account of the colour, number and other details; '*colour*' of animals, clothes and the like: 'the cow or the cloth lost was white'; similarly the '*number*': 'there were ten cows or yokes.' 'Other details'—such as, *e.g.*, if it was gold what was its weight, if it was in a lump or a definite shape. If he gives a correct account of all this, then he establishes his ownership, and as such '*ought to receive the property*.'

An 'account' is called 'correct,' when it is found that what it describes is in exact agreement with what is known by other means of knowledge.

The mention of 'colour, number and other details' is only by way of illustration, and implies also the producing of witnesses and other evidence of ownership.—(31)

VERSE XXXII

IF HE DOES NOT PROVIDE A CORRECT ACCOUNT OF THE PLACE AND TIME, AND ALSO THE COLOUR, FORM AND SIZE OF THE LOST ARTICLE, HE DESERVES A FINE EQUAL TO THAT ARTICLE.—(32)

Bhāṣya.

This verse lays down the penalty for preferring a false claim.

He who does not provide a 'correct'—true—account of the time and place *of the lost article*—that 'it was lost at such at ime and at such a place';—'*colour*' white and the rest; '*form*'—that 'it was a piece of cloth, or a pair of petty-coats' and so forth; '*size*'—that 'it was five cubits or seven cubits in length';—if he fails to give a correct account of all this, then he deserves a fine equal to the property to which he had laid a false claim.—(32)

VII. Property lost and recovered.

VERSE XXXIII

PROPERTY THAT HAS BEEN LOST AND FOUND SHOULD REMAIN IN THE CHARGE OF SPECIALLY DEPUTED (OFFICIALS); AND THE THIEVES THAT HE MAY DETECT IN CONNECTION WITH THIS, THE KING SHALL CAUSE TO BE KILLED BY AN ELEPHANT.—(33)

Bhāṣya.

'*Pranaṣṭādhigatam*,'—that which has been lost and then found, *i.e.*, at first lost and subsequently found.

'*Should remain in charge of officials specially deputed*'—whose chief duty is to take care of the property.

While it is thus kept, if thieves should happen to steal it, —then these thieves the King shall cause to be killed by an elephant.

The specification of the 'elephant' can only be with a view to some invisible (transcendental) result.—(33)

VERSE XXXIV

OUT OF THE PROPERTY THAT HAS BEEN LOST AND FOUND, THE KING, REMEMBERING THE DUTY OF GOOD MEN, SHALL TAKE THE SIXTH PART, OR THE TENTH, OR THE TWELFTH.—(34)

Bhāṣya.

'*Shall take*'—sieze—either the sixth or the tenth or the twelfth part—of the property lost and found, and make over the remainder to the owner. During the first year, he shall take the twelfth part, during the second year, the tenth part, and during the third year, the sixth part. Or, the option regarding the share may be based upon the amount of trouble entailed in taking care of the property.

'*Remembering the duty of good men*,'—*i.e.*, knowing that such is the practice among cultured people.—(34)

VIII. Treasure-trove

VERSE XXXV

IN REGARD TO A TREASURE-TROVE, IF A MAN SAYS TRULY 'THIS IS MINE,'—FROM HIM THE KING SHALL TAKE THE SIXTH PART, OR ONLY THE TWELFTH PART.—(35)

Bhāṣya.

Treasure secretly buried under the ground is called '*nidhi*,' '*treasure-trove*.' There are treasure-troves that have lain under the ground for a hundred, or even a thousand years. If, when the ground is being dug, such a treasure-trove is somehow found by some one, it belongs to the state. As says Gautama (10.43)—'Treasure-trove when found is state-property.' But this applies only to the case of a treasure-trove the original hoarder of which is not known. And with regard to this it has been laid down that one who reports the find is to receive the sixth part of it.

The present verse refers to the case where the original hoarder is either the person reporting the find himself or a descendant of his.

'*If a man says "this is mine" truly*'—*i.e.*, on reliable evidence,—'*from him the King shall take the sixth part*'—at which the King's share is fixed. That is, the King is to take the sixth part out of that treasure-trove of which the rightful owner has been discovered with certainty.

The option regarding the 'sixth' or 'twelfth' part is based upon the qualities of the finder.—(35)

VERSE XXXVI

BUT HE WHO SPEAKS FALSELY SHALL BE FINED THE EIGHTH PART OF HIS PROPERTY, OR A SMALLER FRACTION, ON CALCULATION, OF THAT SAME TREASURE-TROVE.—(36)

Bhāṣya.

But when the man, who has made the statement 'this treasure was hoarded by me, or by my forefathers,' fails to prove this,—then being a liar, he should be fined the eighth part of what his own property may be,—or a smaller fraction of that same treasure-trove. It is not necessary that he should be made to pay in the same metal, gold or otherwise, as that which has been found; he may pay in some other metal of equal value to the former; the exact amount of the fine being such as does not ruin the culprit, and yet teaches him a lesson.

The option is based either upon the peculiarity of the attendant circumstances of each case, or the qualities of the person concerned. That this is so is indicated by the fact that the latter punishment is lighter than the former one, which is excessive. Thus then, where the man is possessed of a large property, and the treasure concerned is small, there the fine shall not be in proportion to the latter; in this case the fine shall be in proportion to the man's property; the former would be too little (to be a deterrent).—(36)

VERSE XXXVII

A LEARNED BRĀHMAṆA, HAVING FOUND TREASURE BURIED BY HIS FOREFATHERS, SHALL TAKE IT WHOLLY; AS HE IS THE MASTER OF EVERYTHING.—(37)

Bhāṣya.

When a learned Brāhmaṇa finds the treasure that had been buried by his forefathers—father, grandfather and so

forth,—then '*he shall take it wholly,*' and shall not hand over to the king the aforesaid part of it.

In support of this the text adds a supplementary exaggeration—'*as he is the master of everything,*'—as has been declared under 1.100.

The rule here laid down applies to the case where the treasure belongs to the Brāhmaṇa; when however its rightful owner is not known, then, even though it may have been found by a '*learned Brāhmaṇa,*' the king's share has to be paid; as it is going to be declared (in 39) that—'of all ancient hoards......the king is entitled to one-half.'

VERSE XXXVIII

WHEN THE KING HIMSELF FINDS A HOARD BURIED OF OLD UNDER THE GROUND, HE SHALL GIVE ONE-HALF OF IT TO THE BRĀHMAṆAS AND HAVE THE OTHER HALF PUT IN HIS TREASURY.—(38)

Bhāṣya.

When the king himself has found treasure, this text lays down that he shall give one-half of it to the *Brāhmaṇas.*

The term '*Treasury*' stands for the place of hoarding.

'*Buried of old under the ground*';—this describes the nature of the treasure-trove.—(38)

VERSE XXXIX

OF ANCIENT HOARDS, AS ALSO OF MINERALS UNDER THE GROUND, THE KING IS ENTITLED TO HIS SHARE, BY REASON OF HIS PROTECTING THEM,—HE BEING THE LORD OF THE SOIL.—(39)

Bhāṣya.

The clause—'*of ancient hoards, etc.*'—is supplementary to the before-mentioned rule that the king should take one-half

of the treasure even when it is found by other persons;—while the clause '*of minerals under the ground*' lays down what has not been mentioned before. Gold, silver and other metals in their crude form, as also red lead, black collyrium and other substances (in their crude form) are what are called '*minerals.*' So that the man who operates golden and other mines, as also one who makes his living by digging out red chalk and such substances from mountains, has to pay the king's share.

'*Ardhabhāk,*' '*is entitled to a share.*'—The term '*ardha*' here should be taken as standing for *share or part* in general; because it occurs in a compound; just as in the compounds '*nagarārdha*' and '*grāmārdha*' (which mean *part* of the city, *part* of the village); it is only when it is used in the neuter form that it means exactly *half*; in the present instance however, as it occurs in a compound and its gender is not ascertainable, it has to be taken as standing for the *sixth or twelfth part*, which has been spoken of in the present context. '*He is entitled to his share*';—this means that he takes a part of it.

The reason for this is stated—'*on account of his protecting them.*'—Though when the treasure is buried under the ground, there is no need for any royal protection, yet it is open to the risk of being taken away by some powerful person; so that there is need for the king's care. It is with a view to this that it has been added—'*he being the lord of the soil*';—he is the master of the soil, so that when something has been obtained out of the soil that belongs to him, it is only right that he should receive his share out of it.—(39).

IX. Stolen Property

VERSE XL

Property, stolen by thieves should be restored by the king to men of all castes ; by retaining such property, the king imbibes the sin of the thief.—(40)

Bhāṣya.

When any property is stolen by thieves, the king should recover it; but he should not use it himself; he should restore it to the persons that may have been robbed.

The use of the term '*all*' implies that stolen property shall be restored to Chaṇḍālas also.

If we read '*chaurāhṛtam*' (in place of '*chaurairhṛtam*'), the compound should be expounded as '*chaurēbhyaḥ āhṛtam*'—*i.e.*, *recovered from thieves*—in accordance with Pāṇini 2. 1. 32. If we adopt the (third) reading '*chaurahṛtam*,' the compounding would be in accordance with Pāṇini 2. 1. 30.

What is meant is that if the property stolen by thieves is incapable of being recovered, it should be made good by the king out of his own treasury.

The second half of the verse—'*By making use*, etc.'—should be construed as follows:—The participle '*upayuñjānaḥ*'—derived from the root '*yuja*' with the preposition '*upa*'—should be taken to indicate figuratively *non-restoration*; the sense being that 'if the king does not restore to the person concerned the property that is his due, and if he uses that property for his own purposes, then it is said to be 'retained' by him; and '*by retaining such property the king imbibes the sin of the thief*,'—'*kilviṣa*' meaning *sin*.—(40)

X. Knowledge of Law, Custom and Usage necessary for the King

VERSE XLI

THE KING KNOWING HIS DUTY SHALL DETERMINE THE LAW FOR EACH MAN, AFTER HAVING DULY EXAMINED THE PROVINCIAL LAWS PERTAINING TO EACH CASTE, THE LAWS OF GUILDS, AS ALSO THE LAWS OF FAMILIES.—(41)

Bhāṣya.

Kuru, Kāshī, Kashmīra and other regions with fixed boundaries are called 'provinces,' and laws obtaining in those are called '*provincial*'; by which are meant those laws that are observed by the people living in the province and called after it. Or, the term 'province' may stand for the inhabitants of the provinces, just as the men on the platform are called the 'platform,' when it is said that 'the platforms are crying'; and the laws observed by these people would, in that case, be called '*provincial*';—the nominal affix 'aṇ' being added in accordance with Pāṇini 4.3.120.

The compound '*Jātijānapadāḥ* is to be compounded as '*jātēḥ-jānapadāḥ*'; the meaning being 'those provincial laws that pertain to each caste'; and these have to be maintained by the king.

'*Having examined*,'—*i.e.*, duly considered the following points—(*a*) are these laws contrary to the scriptures or not? (*b*) are they the source of trouble to some people or not?

After having duly considered all this, he shall '*determine*' —cause to be observed—those laws that are found, on examination, to be not incompatible (with the scriptures or

with the people's convenience); as it is going to be declared later on (verse 46)—'What may have been practised by the good, etc., etc.'

Or, the compound '*Jātijānapadāḥ*' may be expounded in such a manner as to make '*jāti*' the qualification of '*jānapada*'; the term '*jāti*' in this case would indicate *eternality*, and would be only a laudatory epithet to 'provincial laws'; the idea being that 'just as genus is something eternal, so are the provincial laws also, in so far as they are not contrary to the scriptures'; all such visibly useful acts as the feeding of cattle, the storing of water in reservoirs and so forth being such as ought to be performed at all times.

Thus the meaning is that when the men of a certain village have laid down the rule that 'cattle should not be taken to graze at such and such places,' then if some one, for some purpose of his own, breaks this rule,—he shall be punished by the king.

Or, the term '*jānapada*' may stand for *those born in the province*; *i.e.*, the inhabitants of the province; and the compound '*jātijānapadāḥ*' being expounded as '*jātyā jānapadāḥ*,' and '*jāti*' standing fot *birth*,—it would signify the eternal relationship between the *province* and the men *born* there; and the term '*jātijānapadāḥ dharmāḥ*' would stand for *those laws whose beginning cannot be traced, and which relate to the duly qualified persons among those born and living in a particular province.* And though in this case the proper nominal affix to use would have been '*chha*' (giving the form *jānapadīya*), according to Pāṇini 5.2.114, yet it is the '*aṇ*'-affix that has been used; this anomaly being permissible as a 'Vedic anomaly.'

Or, it may be that the term '*jātijānapadāḥ*,' though directly denoting the *inhabitants*, has been applied here to their *laws*,—the two being regarded as identical; so that the phrase serves to restrict the scope of the law referred to,—this restriction being deduced from the men themselves; the sense thus is

that the laws referred to pertain only to the men of certain localities, and not to all the *Āryas*,—the former being such as have a morality akin to that of the lower animals, and not entitled to the performance of any other duties, they perform only such acts as are in keeping with their own customs; such, for instance, as the marrying of their own mother and so forth;—and as such in the performance of such acts, these men shall not be prevented by the king having his sway over the whole world (thence also over the barbarians); because such practices are permitted by their 'tribal custom,' sanctioned by the geographical position of the locality inhabited by them. Nor could such practices be regarded as 'contrary to the scriptures'; because the *incompatibility of scriptures* has a meaning only for persons entitled to the scriptural acts, and not to lower beings.

An objection is raised—"In Manu (10.63), such duties as *harmlessness*, *truthfulness*, *absence of anger*, *purity* and *control of the senses* have been laid down in reference to the irregularly mixed castes; and *barbarians* also belong to the same category as those castes; so that if such men would not be committing something wrong in marrying their mother, or in not using water after urinating, what sort of 'control of the senses' or 'purity' would there be for them?"

This has been already answered. Purity and other duties pertain to the inhabitants of the whole of Āryāvarta; and so far as the four castes are concerned, there is no restriction of place regarding the duties pertaining to them.

Some people have held that the restriction as to the locality of the 'laws' pertains to some transcendental results;—as we shall point out later on.

There are people following a common profession; such as tradesmen, artisans, money-lenders, coach-drivers and so forth; and the laws governing these are 'guild-laws.' *E.g.*, certain principal tradesmen offer to the king his royal tax fixed upon verbally by their declaring before the king—' we are living by

this trade, let the tax thereupon be fixed at such and such a rate, be our profits more or less'; now on the king agreeing to this, they join together and lay down certain rates among themselves, which are calculated to bring them larger profits and likely to be detrimental to the interests of the kingdom,—*e.g.*, (*a*) 'Such and such a commodity should not be sold during such and such a time,' (*b*) 'such and such is to be the tax payable either to the king or towards the celebration of some religious festival,' and so forth. And if any one transgresses such rules, he shall be punished for acting against 'guild-laws.'

'*Laws of families*';—'Family' means *race*; some remote ancestor of well-known fame may have laid down the rule—'whenever any of my descendants earns wealth, he shall not make use of it without having first given something out of it to Brāhmaṇas';—and such rules are what are meant by 'laws of families'; or such rules as 'priests and bridegrooms shall be selected out of those same families out of which they have been selected by one's forefathers, provided that suitable men are available therefrom.' One who acts against such laws shall be punished by the king.

These have been reiterated here with a view to preclude the idea that such laws govern only particular groups of men and as such cannot be regarded as 'Equity' proper.

The transgression of these laws does not fall within the category of 'Breach of Contract,' as we shall show later on.—(41).

VERSE XLII

FOR MEN FOLLOWING THEIR RESPECTIVE OCCUPATIONS,—EVEN THOUGH LIVING AT A DISTANCE,—COME TO BE LIKED BY THE PEOPLE, WHILE THEY REMAIN FIRM IN THEIR OWN DUTIES.—(42)

Bhāṣya.

This verse shows that the aforesaid 'local' and other laws serve both visible (temporal) and invisible (spiritual) purposes.

'*Their respective occupations*,'—in accordance with the condition of their families;—the men who follow these '*come to be liked*.' As a rule it is only men living near each other that come to be liked; but the man who follows his own occupation is liked also when he is at a distance.

'*While they remain firm in their own duties*';—this stands for not encroaching upon the work of other persons;—the meaning of the verse being that—'those who do not encroach upon the work of others come to be liked by all men.'—(42).

XI. General Rules regarding Judicial Proceedin

VERSE XLIII

NEITHER THE KING HIMSELF NOR ANY SERVANT OF HIS SH PROMOTE A SUIT; NOR SHALL HE SUPPRESS A SUIT THAT HAS BEEN BROUGHT UP BY ANOTHER PERSON.—(43)

Bhāṣya.

'*Suit*'—object of dispute;—none such shall the king himself '*promote*'—*i.e.*, cause to be instituted;—for encompassing the injury of some hated persons, or for obtaining the wealth of some rich person, he shall not instigate his debtor or some other person who may have suffered at his hands, saying to him—'you should do such and such a thing, why do not you bring it up before me'?—or, 'you have been injured by him, I shall have you avenged';—any such thing the king shall not say, even though his hate or greed for riches be great.

When a suit has been '*brought up*'—presented before him—he shall not '*suppress*'—hush up, ignore, it. The verb '*nigirēt*,' 'swallow,' is often used in the sense of *ignoring*; and the root '*grasa*' (used in the text) is synonymous with '*ni-gira*.' People make use of such expressions as—'everything that is said to-day he *swallows up*, and he does not answer it.'

Others explain the latter half of the verse as follows:—'He shall not appropriate—make his own—any *artha*, *i.e.*, money, that is brought to him in any manner save through the suit.' If the king were to inflict fines in an unfair manner, he would be incurring evil in the next world and bring trouble on his kingdom.

The following is yet another explanation offered by ...ers:—'*The king himself shall not promote a suit*';—*i.e.*, ...n, though he may get at the offender directly, he himself ...ll not say anything, until the man has been brought ...ore him by the man against whom the offence has been ...mitted, in a regular suit. Because it is only after the ... has been defeated in the suit brought by the other party ... it is time for the king to perform his duty of inflicting the legal punishment. But this applies only to the non-payment of debts and similar subjects; as for thieves and criminals, —who are like 'thorns' in the kingdom,—these the king shall capture and punish, even when he catches them himself. The rest of the verse is as explained before.

'*Nor any servant of his.*';—'*servant*,' *i.e.*, person holding an office under him.—(43)

VERSE XLIV

JUST AS THE HUNTER DISCOVERS THE FOOT-PRINT OF THE DEER BY THE DROPS OF BLOOD, SO SHOULD THE KING DISCOVER THE RIGHT BY MEANS OF INFERENCE.—(44)

Bhāṣya.

It has been said above that the king himself shall not, in a hurry either haul anyone up or punish him for any offence; and the reason for this lies in the consideration that it is quite possible that the act that the king regards as an 'offence' might have been done in joke. Now the question arises—how is it to be ascertained whether the act has been done in joke or through malice and such other causes?

It is in answer to this question that it is said that 'this is to be ascertained by means of inference.'—Just as the '*hunter*' —fowler—'*discovers*'—gets at—'*the foot-print*' of the deer that has been wounded and disappeared from view by means of the drops of blood flowing from the wound,—in the same

manner the king should discover the root-cause of the su
which may be not perceptible,—by means of inference.

The term '*dharma*,' '*right*,' here stands for *the real*
of the case.

The restriction of 'inference' as a means of finding
truth, already mentioned before (in verse 3), is for the
pose of emphasising the point.—(44)

VERSE XLV

WHEN ENGAGED IN JUDICIAL PROCEEDINGS, THE KING SHALL KEEP HIS EYE UPON THE TRUTH, UPON THE OBJECT, UPON HIMSELF, THE WITNESS AND UPON THE PLACE, THE TIME AND THE ASPECT.—(45)

Bhāṣya.

'*When engaged in*'—dealing with—'*judicial proceedings*'—the king shall attend, not only to the mere letter of the suit itself, but also to truth, etc.

(*a*) '*Keep his eye upon the truth*';—even though the plaintiff or the defendant, through shyness, may not have stated his case fully, yet if the king is enabled,—either on the strength of other proofs, or by means of the 'inference' mentioned above,—to find out what the actual facts of the case are, then he shall, by all means accept them,—and not reject them, simply because the party concerned did not state them in full. This is what has been thus declared—'Having sifted all fraud, the king shall decide the case on facts.' (Yājñavalkya, *Vyavahāra* 19.)

(*b*) '*Keep eye upon the object*';—the term '*artha*,' '*object*,' denotes *wealth or purpose.* The meaning thus is that if he obtains a large amount of wealth (as the legal fee), then he shall even give up all other business of state and not hesitate to take up the case brought up ; in fact he shall begin the investigation at once. Or, the meaning may be

that if some one tells him that the witnesses in the case, or some member of the Court, have received large amounts in bribe from such and such a party,—then he should examine this statement in the following manner.—'If the cause of the suit is insignificant, the acceptance of a large bribe is not possible;—but if the cause is worth much, and the members of the court and the witnesses are in poor circumstances, then it is just possible'; and the truth shall be found out by other means. This is to be done by making (*c*) '*himself*' the '*witness*' (*d*). That is to say, with a view to tracing out the bad characters in his kingdom, he shall get spies to find out the truth.

Or '*having an eye upon himself*' (*c*) may mean that he must attend to his own circumstances,—*i.e.*, he should see whether his treasury is depleted or full.

. Under this construction '*witness*' is an independent word (and not in apposition to '*himself*,' as in the former interpretation).

(*e*) '*Having an eye upon the place*';—in certain places even a small object becomes great, while in another even a great object becomes small. This is what is meant by '*having an eye upon the place*.'

(*f*) Similarly he should have his eye upon the *time* also.

(*g*) '*Aspect*' stands for the nature of the cause; he shall find out whether it is important or unimportant.

Others have explained the verse as follows:—'He shall find out the real nature of (*a*) the *truth* and (*b*) the *object* of the suit, by making (*c*) *himself* the *witness* (*d*); that is to say, he shall find out that *truth* is more important than any *object*, since it accomplishes very important ends and is useful in both worlds, and hence he should always have recourse to *truth*, and ignore the *object*, which is devoid of essence. (*e*) '*Place*,' in this case stands for heaven and the other regions, obtainable by means of truth; (*f*) '*time*' for a prolonged stay in other regions, and (*g*) '*aspect*' for the

beauty of the celestial damsels.' And the reverse of all t[his] is obtained by the renouncing of *truth* and the following other *objects* (45).

VERSE XLVI

WHAT MAY BE FOUND TO HAVE BEEN OBSERVED IN PRACTICE [BY] THE GOOD AND THE RIGHTEOUS TWICE-BORN MEN, THAT [HE] SHALL ORDAIN FOR COUNTRIES, FAMILIES AND CASTES,—PROVIDED THAT IT IS NOT ANTAGONISTIC.—(46)

Bhāṣya.

'*Good*'—those who eschew what is forbidden ;—'*righteous*'—those who do what is enjoined. Though either one of these two words would have sufficed to express what is meant, yet they have both been used ; that is the reascn why we have explained them as having two different meanings.—What is practised by such persons, and in support of which we do not find any *Shruti* or *Smṛti* texts,—'*that he shall ordain*'—cause to be acted up to—'*for countries, families and castes*' ;—'*provided that it is not antagonistic*'—to directly perceptible *Shruti* and *Smṛti* texts.

Verse 41 has declared the authoritative character of 'provincial laws, laws of families, etc., etc.' ; and the present verse adds the qualification that such laws shall be not opposed to the scriptures. Local and king-made laws also, even when they pertain to temporal affairs, are to be obeyed only when they are not contrary to the scriptures. For instance, in some places the debtor is made to repay the debt by selling himself ; and this is contrary to the Smṛti text—'by service also the debt may be liquidated, etc.' (*Manu*, 177) ; as is shown under that verse. Further, under 2.6, the authority of *Practice* (usage) has been explained as based only upon the fact of its being connected with (observed by) cultured men ; and no man can be called 'cultured' if he

[i]ts contrary to the scriptures. Hence the present verse is [m]eant to be applicable to such practices as do not pertain to [sp]iritual matters.

Another writer explains the text as follows:—What is [pr]actised by the good and righteous twice-born men in one [cou]ntry, the king should introduce in another country also, [i]t is found to be not antagonistic to *Shruti* and *Smṛti* texts. [E.g.], the bull-sacrifice and other similar acts that are well [kn]own among the people of the North should be made to be performed by the people of the East, South and West also. Because from usage, we deduce the corresponding *Smṛti*, and from this latter the corresponding *Shruti*; so that if the text thus deduced on the strength of the practice of the northerners were in some such form as that such and such a sacrifice shall be performed by the *udīchyas, people of the north*'—then since the nominal affix conveys several such meanings,—such as (*a*) birth, (*b*) source, (*c*) origin, (*d*) destination and (*e*) supplement,—all which fall within one or other of the two categories of 'distinctive' feature and 'modification,'—none of these as denoted by the nominal affix in the term '*udīchya*' could help to mark off any people that could be called '*udīchya*' 'northerner'; so that the meaning of the said deduced text would come to be that *every man* should perform the act in question; specially as the exact denotation of names of countries is always vague. Even if the text deduced were in the form—'the act is to be done by one who is born in the north, or who lives in that country,'—then this would not be compatible with facts; since as a matter of fact, a man, even though born in a particular country, does not follow its usage when he lives elsewhere, or even though a man may be living in a certain country, he does not adopt its practice if he is not born there. If again, the terms used were 'the native or inhabitant of such and such a country,' then also, in as much as *nativity* and *habitation* are always uncertain, this also would

not be right; neither *nativity* nor *habitation* is fixed to t
same extent as one's *caste* or *qualities* or *race*. Thus th
being no such term as would infallibly single out
performers of the acts in question, they should be taken
to be performed by all men; so that there is no such th
as 'local usage.' The same reasoning holds good regard
'family usage' also.

"If this is so, then how is it that *smṛti-writers* ment
'local usage,' 'family usage' and 'caste-usage' as distinct
from one another?"

It has been already explained that the restriction of the acts concerned is for temporal purposes; and in this sense the restriction regarding acts is quite reasonable.

'*Family*' is a part of 'race.' The duty that is laid down for the entire *race*,—such as people of the Vashiṣṭha-race shall not mix with those of the Vishvāmitra-race,'—are to be regarded as binding, since race-names are fixed for all time.—(46)

XII. Non-payment of debt.

VERSE XLVII

ON BEING PRAYED BY THE CREDITOR FOR THE RECOVERY OF MONEY FROM THE DEBTOR, HE SHALL MAKE THE DEBTOR PAY TO THE CREDITOR THE MONEY PROVED TO BE DUE.—(47)

Bhāṣya.

The rules that are applicable to all suits in common having been described, the author now proceeds to lay down those relating specifically to each of the several kinds of suits.

The man who receives money from another person on the understanding that at some other time he would re-pay it with interest is called the '*debtor*'; and he who lends the money on the understanding that he is doing it with a view to being repaid with interest is called the '*creditor*.' These two are relative terms.

'*Money from the debtor*';—from the context it is clear that this phrase stands for what is due to the creditor; and the '*recovery*' of this means its repayment to the creditor. The second '*artha*' stands for *purpose*, 'for.' Thus the meaning of the whole is that—'when the king is prayed—petitioned to—by the creditor to the effect that he may be pleased to make the debtor repay what he had borrowed from him,—then the King *shall make the debtor pay the money to the creditor*.'

'*Dhanika*' *is one who has money*; and it is the creditor who is called, in ordinary parlance, '*Dhanika*.' In view of the verb '*make to pay*.'—the right case-ending to use would have

been the Dative, yet it has not been used, because the man has not yet become the actual *recipient.* We have similar usage in such expressions as '*ghnataḥ pṛṣṭham dadāti*' (the man offers his back to the striker), '*rajakasya vastram dadāti*' (makes over the clothes to the washerman); in neither of these cases have we the Dative ending, because there is no transference of ownership; and in the absence of such transference, the act of *giving* is not completed.

The question arising as to whether the King is to make the debtor pay simply because the creditor says it is his due, the answer is *no,*—he shall make him pay only what is *proved to be due*;—*i.e.*, only when the King has assured himself, by indubitable proof, that the man does really owe the amount; or '*vibhāvitam*' may be taken to mean 'admitted'; since the method to be employed regarding *disputed* debts is going to be laid down below, under verse 52.

"But how can '*vibhāvita*' mean *admitted?*"

There is no force in this objection; it is quite possible that he may have forgotten about the debt, but on being shown his own writing (on the deed), he comes to admit it himself; so that though he did not admit it before, he comes to admit it afterwards; or it may be that even though knowing all along that he did borrow the money, he might dissemble in the beginning (before the producing of the document).—(47)

VERSE XLVIII

HAVING DETERMINED THE MEANS BY WHICH THE DEBTOR MAY BE ABLE TO GET HIS MONEY, HE SHALL, BY THOSE SAME MEANS, MAKE THE DEBTOR PAY UP.—(48)

Bhāṣya.

It is going to be laid down later on that when the debtor is forced to repay the creditor's dues, a certain percentage

has to be paid to the King by the debtor, by way of penalty; so that it might be possible for the King to fall into the temptation of decreeing, without having recourse to other possible means, the creditor's suit and thereby adding to his own income; in order to guard against this, we have the present text.

The King shall make the debtor pay up, by those means, —going to be described—by which the creditor may receive his money ;—'*saṅgṛhya*' '*haviny determined,*' *i.e.*, having ascertained that 'by such and such means alone would the creditor receive his due.' Or the root '*graha*' in '*sangṛhya*' may be taken as denoting *persuasion.*

The term '*uttamarṇika*' is the same as '*uttamarṇa,*' 'creditor; *i.e.*, he who has the 'debt,' '*ṛna,*' to his '*good,*' 'credit,' '*uttama*'; the word being formed with the affix '*ṭhan,*' according to Pānini 5.2.115; similarly with the other term also ('*adhamarṇikaḥ*'). Money advanced for the earning of interest is called '*ṛṇa,*' 'debt'; and there are two parties to it, the giver and the receiver; for the giver the debt is *to the good,* '*uttama,*' as in the matter of giving it and receiving it he is an independent agent; for the receiver on the other hand, it is *to the bad,* '*adhama,*' because it is a source of trouble to him or account of his having to pay interest on it.

These explanations however are offered only by way of explaining the literal signification of the terms; in reality, they have their denotation as referring to the *giver* and *receiver*—fixed purely by conventional usage.

The next verse explains what are the 'means' referred to in this verse.—(48)

VERSE XLIX

HE SHALL MAKE THE ADVANCED MONEY REPAID BY MEANS OF (*a*) GOOD FAITH, (*b*) TACTFUL TRANSACTION, (*c*) TRICK, (*d*) MORAL PRESSURE, AND (*c*) FORCE, THE FIFTH.—(49)

Bhāṣya.

(*a*) '*Dharmēṇa*,' '*by means of good faith*';—*i.e.*, receiving little by little;—'so much to-day, so much to-morrow, so much the day after to-morrow;—just as it behoves him to maintain his family, so also is it his duty to help me,—I also am a member of his family and as such a sharer in his wealth,'—the use of such language constitutes '*good faith*.'

(*b*) The man who has absolutely no property should be made to repay the debt by '*tactful transaction*'; on the same principle on which, for the purpose of drawing out water from the ear one puts more water into it, the creditor should advance to the debtor more money, in order to enable him to have recourse to agriculture or trade or some other means of acquiring wealth, and then receive from him the wealth thus obtained. The '*vyavahāra*' that consists in filing a suit before the King is not what is meant by the term as used here; since one should have recourse to this only when all other means have failed, and as such it is included under 'force.'

(*c*) When, even though possessed of the requisite wealth, the debtor does not pay in a straight manner, he should be made to pay by means of '*trick*'; *i.e.*, under some such pretext as that of a marriage-ceremony or some such occasion, he should borrow from him a bracelet or some such ornament, and not return it until the debt has been cleared off.

(*d*) '*Moral pressure*';—by giving up food and constantly sitting at the man's door and so forth.

(*e*) '*Force*';—presenting one'self before the King's court; where the King shall have the man called quietly and by inflicting some punishment make him pay up. The '*bala*' of the text does not mean the creditor's strength in the shape of his relatives and wealth, etc.; because of the maxim that the 'force' or 'strength' of the subject lies in the King, which has been propounded in connection with the present context.

Others have explained the verse to mean that by the means here enumerated the *King* shall have the debt repaid;—and their reason for saying so lies in the fact that it occurs in the context dealing with the duties of the King. The sense of the verse thus is that 'when the amount claimed has been either admitted by the debtor or decreed by the court, the King shall make him pay it up by these methods;—and he shall not, all at once, have the entire property of the debtor handed over to the creditor; since the kindly treatment of both parties constitutes the King's duty; and if the debtor's entire property were handed over to the creditor, his whole family would perish, and this would not be right. To this end we have the declaration—'Without absolutely ruining him, the debtor should be made to pay little by little, according to his income, specially so in the case of the Brāhmaṇa,—when the King is righteous.' So that the man should be made to pay the principal along with a small amount as interest; but in the event of the man possessing wealth more than what is needed for the maintenance of his family, he should be made to pay the entire amount of the claim; and if this be not possible, then 'the debt shall be liquidated by service, etc.' (8.177).

In the former explanation, the creditor shall not have recourse to 'trick' or 'moral pressure,' without notifying the same to the King.—(49).

VERSE L

THE CREDITOR WHO SHALL HIMSELF RECOVER HIS MONEY FROM THE DEBTOR SHOULD NOT BE PROSECUTED BY THE KING, FOR RECOVERING WHAT IS HIS OWN PROPERTY.—(50)

Bhāṣya.

This verse serves to make clear what has been said before.

If the creditor recovers his money from the debtor by means of 'trick' and the other methods, the King shall not

tell him anything, such as—'why did you, without informing me, take from him by trick or fraud, his ornament, etc., for the purpose of recovering your debt? Why do you not return it to him?'—(50)

VERSE LI

THE MAN WHO DENIES A DEBT SHALL BE MADE TO PAY THE CREDITOR'S DUE, PROVED BY EVIDENCE, AS ALSO A SMALL FINE, ACCORDING TO HIS MEANS.—(51)

Bhāṣya.

Even in the presence of convincing proof, if the debtor does not himself admit the debt, then recourse should not be had to 'trick' and the other means,—the King should be informed of it; and when summoned by the King, if the man '*denies the debt*,'—saying 'I do not owe him anything'—then, on its being '*proved by evidence*'—in the shape of written document, oral witnesses and possession,—and the man being made to confess that he does owe the debt,—he shall make the debtor repay the '*creditor's due*,'—'*as also a small fine*,' a small penalty, which shall, later on, be fixed at the tenth part of the claim.

If the man be unable to pay the whole fine, he may be made to pay a fine even less than the tenth part. Or, the favour of the fine being inflicted according to the man's means,—even less than the tenth part—may be taken as pertaining to the case of the man who denies the debt (not through perversity, but) through having forgotten all about it, through carelessness.

'*Evidence*,' proof, is of three kinds; thus enumerated elsewhere—'If one did not have a written deed executed, nor is there a witness, nor previous claiming, there the only means is the supernatural one (ordeal).'—(51)

VERSE LII

ON DENIAL BY THE DEBTOR, WHEN ASKED IN COURT TO PAY THE DEBT, THE COMPLAINANT SHALL PRODUCE A WITNESS, OR ADDUCE (OTHER) EVIDENCE.—(52)

Bhāṣya.

When, in a court of justice, the debtor is asked by the King or the judge to repay the debt to the creditor,— if this is followed by '*denial*' or evasion by him,—then the '*complainant*,'—*i e.*, the lender of the money, the creditor—shall '*produce a witness*' who would prove his case,—'*or adduce other evidence*,'—in the shape of a document, etc.

The term '*dēsha*' (lit. *place*) indicates the man present at the place (where the money was lent); and though the term '*kāraṇa*,' 'evidence,' stands for all forms of evidence, and as such includes the *witness* also, yet here it should be taken as standing for 'evidence other than witnesses,' according to the maxim of 'the cow and the bull' ('*Go-balīvarda*' where the term 'go,' being applicable to both the cow and the bull, is taken to mean the *cow* only); so that the phrase 'shall adduce evidence' must mean 'shall adduce *other forms* of evidence.'

Or, the reading may be '*abhiyukto dishēddēsham*,' and the meaning of this would be as follows:—The debtor, on being asked to pay, answers the claim by saying 'it is true that I borrowed the money from him, but I paid it back'; and when this happens, the man who was the *complainant* becomes the *defendant*, and on being thus made the defendant, he should *question the debtor regarding the place*—'at what place did you repay the debt'?—as also regarding the *time*,—the mention of '*place*' being only by way of illustration;—'*or he shall adduce other evidence*' '(of non-payment)'; *i.e.*, he should say 'I have got other means of proving my claim'; or

it may mean that 'if he is unable to produce the witness he should show why he is so unable'; and in this case the particle '*vā*,' '*or*,' should be taken to mean '*cha*,' 'and.'—(52)

VERSE LIII

He who mentions the wrong place,—or who, having mentioned it, retracts,—or who does not understand that his previous and subsequent statements are contradictory;—(53)

Bhāṣya.

It has been said before that on the debtor denying the debt, the creditor complains to the King,—*i.e.*, the complaint shall be lodged in the form—'At such and such place, at such and such time, such and such an amount of money was borrowed from me by this man';—and on being questioned, he may say 'I was not at the place at the time,' referring to the place and time that have been alleged by him as those at which the money was borrowed: and in this case he 'mentions the wrong place.' Or, the term '*dēsha*' may stand for the *witness*; and the text means 'if he cites as witness a person whose presence at the time and place of the transaction is impossible.'

Having alleged the place, time, etc., '*if he retracts*,'—saying 'I did not say this.'

He who does not understand that his '*previous statement*'—what he had alleged before—and his '*subsequent statement*'—what he alleges afterwards—are '*contradictory*';—or if he does not realise the discrepancy in his own behaviour.

'*Such a person shall be declared to have failed*'—this verbal clause (occurring in verse 57) has to be construed with each verse (from 53 to 57).—(53)

VERSE LIV

HE WHO, HAVING PUT FORWARD A STATEMENT, SUBSEQUENTLY RETRACTS; AND WHO ON BEING QUESTIONED REGARDING A FACT (PREVIOUSLY) DULY ALLEGED, DOES NOT SUPPORT IT;—(54)

Bhāṣya.

The first half of the verse only re-iterates what has been said before, and it is only the second half that puts forward something new. What had been said in the first half of the preceding verse is exactly what is meant by the first half of the present verse.

'*Who having put forward a statement,*'—having said something—'*subsequently retracts,*'—deviates from it, saying 'I am not sure about the time and place'.........,—he also fails in his suit.

Having once '*duly*'—with certainty, and clearly—'*alleged a fact*',—if, '*on being questioned about it*'—what do you means?—By what evidence do you prove your case?'—if he loses faith in the allegation clearly made by himself, and proceeds to talk about irrelevant matters, with the motive that—'after due investigation I am sure to lose the case, I may just as well get over a little time,'—then such a person also fails in his suit.

Or, the term '*apadēsha*' may stand for *fraud*; the meaning being that if after having set up a fraud, he slinks away from it, saying—'I have a severe headache now, I cannot answer any questions,'—or if he opens his case with false statements,—then also he fails in his suit.—(54)

VERSE LV

HE WHO SECRETLY CONVERSES WITH THE WITNESSES IN A PLACE NOT FIT FOR CONVERSATION, OR WHO DOES NOT LIKE THE QUESTION BEING INVESTIGATED, OR WHO FALLS BACK;—(55)

Bhāṣya.

'*In a place not fit for conversation*'—*i.e.*, hidden from others,—'*who converses with the witnesses, secretly*'—*i.e.*, alone, for fear of being overheard.

'*Who does not like the question*,'—the matter under enquiry—'*being investigated*'; and on the pretext of some work for the King himself, or by the favour of the Prince or the Minister, etc.; manages to gain time;—and '*who falls back*,'—'*such a person fails*' is the verbal phrase to be construed here.

The '*falling back*' mentioned here is the same as the '*retracting*' mentioned before (in verse 54). The purpose of such repetition of the same idea has already been explained. We have to adopt some such distinction in order to guard the text against the charge of containing absolutely needless repetitions.—(55)

VERSE LVI

—HE WHO, ON BEING ORDERED TO SPEAK, DOES NOT SPEAK; OR WHO DOES NOT PROVE WHAT HE HAS ASSERTED;—OR WHO DOES NOT GRASP THE PREVIOUS AND SUBSEQUENT STATEMENTS;—SUCH A PERSON FAILS IN THAT SUIT.—(56)

Bhāṣya.

This verse is found to state what has been already mentioned in the foregoing verses. The use of such repetitions has been already explained on the ground that wholesome advice should be repeatedly driven home.

The meaning of the words of the text is as follows:—

The plaint having been filed and duly expounded by the complainant, when the defendant is asked to make his statement regarding the matter of the plaint, if he does not make a statement, even though repeatedly asked to do so; *i.e.*, he who, having no proper answer to make, does not give any answer at all, thinking that if he gave an unsuitable reply, his defeat would be certain, whereas if he kept quiet, it would be doubtful, also fails in his suit.

The time-limit in connection with the filing of the answer is going to be laid down (under 58)—'If he does not file the answer within *three fortnights, etc.*' When the man is suddenly dragged to the court, since he does not know what the complaint against him is, he cannot find the right answer at once, and hence it is only right to grant a postponement, but when the law fixes the time-limit being fixed at 'three fortnights,' what is meant is that so many days are to be granted to the defendant, who proceeds to file portions of his answer within five, ten or twelve days,—and not that he is to keep absolute silence for such a long time. As for the law that allows of more time,—*e.g.*, in the text 'In some cases he may wait for one year, when there is non-understanding' (*Gautama*, 13.28),—this should not be followed in practice; because if 'non-understanding' is sufficient cause for delay, why should it cease to be so after the lapse of one year only? Nor can there be any certainty as to the man, who does not grasp the plaint during one year, being able to grasp it after that time. Hence the postponement granted should be just for that period of time which may be regarded as a fair interval for the understand ing of the suit and the finding of the answer. So that no more time shall be granted than what may be considered sufficient for a man of even dull intelligence for the said purpose.

As regards the plaintiff, it is only right that he should file his plaint on the same day (that he presents himself before the Court); as he already knows that 'such and such a man owes me such an amount,' or that 'such and such a man has done me this wrong'; and he takes action also entirely upon his own choice. So that when the man is setting forth his own case, why should he have a doubt upon any point (for the clearing of which he should need time)?

As for the defendant, on the other hand, he does not know anything about the complaint, when he is suddenly hauled up by the King's officers; how then can he have any definite notion regarding either the plaint or the answer? He is in fact called upon to understand the plaint and find its answer

at the spur of the moment; otherwise he would not be a 'defendant' at all.

Thus then, for the Plaintiff, it is necessary to complete his plaint, in regard to the case he has to prove, on the same day; or he may be granted two or three days. Both these views have been accepted by other *Smṛtis*:—*e.g.* (*a*) 'The complaint should be always prepared with a definite idea of the case and its proofs,' and again: 'He may strengthen his case for ten or twelve days'; and (*b*) 'The plaintiff shall immediately set forth his case in writing' (Yājñavalkya, *Vyavahāra*, 7).

As for the view that 'postponement may be granted for one year,' there is no authority for it, and as such it cannot be accepted. We cannot always assume the presence of Vedic texts corroborative of such Smṛti-texts as bear upon judicial proceedings,—in the same manner as we do in the case of the *Smṛti* texts dealing with the *Aṣṭakā*-offering; because the judicial proceeding is not of the nature of an *act* to be done. In fact, we have already shown that such assumption is not possible in the case of matters amenable to other means of knowledge (than verbal authority).

This postponement of the complaint is not to be granted in all cases; since it has been laid down that—'In the case of heinous crimes, of theft, of assault, of charges in connection with cows, of wrong done to the life and property of women, the defendant should be made to answer the charge at once; in other cases the time has been declared to be allowable according to the wish of the Court' (Yājñavalkya, *Vyavahāra*, 12). In the case of heinous crimes and the rest, if a long postponement were granted, then, during the interval, the defendant might propitiate the other party. It is for this reason that *immediate answer* has been required. Specially as in such cases, there can be no lapse of memory or other causes that would justify the postponement of the answer; because as a rule charges of heinous crimes are laid before the King immediately, for the simple reason that in such cases there is great urgency. For instance, in the case of the

theft of clothes, there is always the chance of its former colour being altered during the interval. Then again, in such cases such witnesses as may have happened to be present by chance would be immediately available, while (if postponement were granted) they would have gone to other places, and, as their name and caste, etc., would not be known, they could not be traced and found. So that there would naturally be absence of requisite proof.

Further, in the case of non-payment of debt and other matters, the parties may settle it between themselves, in which the King cannot interfere; for when the case has been amicably settled, it is no business of the King's to enquire how much of the claim has been paid. As for the criminal, on the other hand, it is the duty of the King to punish him, even though he may have come to terms with the plaintiff. For these reasons, the conclusion is that there shall be postponement only in the case of non-payment of debt and such cases, while in the case of crime, etc., immediate answer shall be demanded. To this end we have the following declaration—'In the case of non-payment of debt, etc., postponement may be granted, for the purpose of finding out the truth, as disputes on such matters are intricate, and there is possibility of the defendant being incapable of supplying the answer at once, or of his having forgotton the facts of the case';—and the meaning of this *Smṛti* text is that in a case, where the plaint happens to be an intricate one, it is only natural that being so intricate, it cannot be grasped at the spur of the moment,—and every one cannot remember, after the lapse of a long time, all the details clearly and in the correct order, in order to be able to offer a suitable answer.

'*And does not prove what he has asserted,*'—*i.e.*, having put forward the case he has to prove, he fails to establish it, because he has no proofs, and not because he has no opponent (against whom he would have to establish it).

'*Who does not grasp the previous and subsequent statements*';—this has been already explained (under 53).

For the said reasons, the person fails in the matter of the suit; *i.e.*, is defeated.—(56)

VERSE LVII

HAVING ASSERTED THAT HE HAS WITNESSES, AND ON BEING ASKED TO NAME THEM, IF HE DOES NOT NAME THEM,—HIM ALSO, ON THESE GROUNDS, THE JUDGE SHALL DECLARE TO HAVE FAILED IN HIS SUIT.—(57)

Bhāṣya.

The term '*jñātāraḥ*' stands for *witnesses*. Having said that 'I have witnesses,' he is ordered—'name them'; thereupon, if he does not name them, indicating their residence, name and caste;—then, on each of the above-mentioned grounds, he should be regarded as having failed.

'*Dharmasthaḥ*' is one who has been appointed to try cases,—the Judge; and he should pronounce him to have failed, saying 'this man is non-suited.'

Just as one loses his case by the other party adducing proofs establishing the contrary of his contention, so does he lose it also by the absence of proofs in support of it; and this absence of proofs is ascertained by the fact of their not being adduced by the party at the right time, even though repeatedly asked to do so,—as also by the adducing of proofs to the contrary.

'*Jñātāraḥ*' ends in the '*tṛn*' affix; and as such it should govern a noun in the Accusative case, the use of the Genitive being precluded by Pāṇini, 2.3.69.

The right reading being '*hīnam tam*'—the particle '*iti*' should be taken as denoting *kind*;—the sense being—'on these, and on other similar grounds, the Judge shall declare him to have failed';—if, on the other hand, the particle '*iti*' be taken as referring to the whole sentence, then the correct reading would be '*hīno'-sau*'; because the whole sentence being the object of the verb, there would be nothing to justify the use of the Accusative ending (in '*hīnam tam*').

These grounds of defeat are infallible, unlike the aspect, gestures, etc. (of the parties), which are fallible.

If at the time of the enquiry, a party does not present himself,—or even though presenting himself, does not offer any answer,—then it becomes certain that there are no grounds for the man succeeding in his suit. If the King were not to non-suit the party who never offers an answer, then the entire *judicial machinery would become upset.*

As regards the man not perceiving the inconsistency between his first and subsequent statements,—this has to be treated on the same footing as *gesture* and other indicative signs. In the case of a man who throughout is very talkative and bold and clever, gestures and other indicatives are not infallible guides; and being similar to indirect verbal indicatives, they are only regarded as corroborative of the decision regarding defeat or victory taken on other grounds.—(57)

VERSE LVIII

IF THE COMPLAINANT DOES NOT SPEAK OUT, HE SHALL BE IMPRISONED AND FINED, ACCORDING TO LAW. IF THE OTHER PARTY DOES NOT ANSWER WITHIN THREE FORTNIGHTS, HE BECOMES DEFEATED ACCORDING TO LAW.—(58)

Bhāṣya.

If the '*complainant*'—plaintiff—having gone to the King, and on getting the other party summoned,—does not state his case, then, on account of having done all this needlessly, '*he shall be imprisoned and fined*'; whether the punishment shall be imprisonment or fine, and what shall be the exact period and amount of these, should be determined in accordance with the nature of the case and the loss entailed upon the other party on account of being summoned. For this reason it is necessary for the complainant to state his case on the same day.

As for the defendant, '*if he does not answer within three fortnights,*'—then he shall not be either imprisoned or fined; in fact, if he does not answer the charge within the time, he loses the case.

'*According to law*';—such defeat would be quite legal, and not illegal.

'*Within three fortnights*'; .... (?)

The real meaning of this verse has been explained by us above (under verse 56).—(58)

VERSE LIX

IF ONE FALSELY DENIES A DEBT, OR IF THE OTHER FALSELY DEMANDS IT,—THESE TWO, PROFICIENT IN DISHONESTY, SHOULD BE MADE BY THE KING TO PAY A FINE DOUBLE THAT SUM.—(59)

Bhāṣya.

In a case where on the strength of other proofs it has been decided that the creditor had lent only 5,000, while the sum entered in the document is 10,000; from this it is understood that, the creditor has been dishonest in his dealings, having thought that, as other kinds of evidence would be admissible only for one year, he would get what he would prove by means of the documentary evidence only; and being found to be dishonest, he should be fined double the amount. But in a case where there may be a doubt as to whether the fraud had been committed intentionally, or only through carelessness, the fine shall be only ten per cent.

Similarly in the case of the defendant also. It is not that if he denies the whole claim, the fine shall be ten per cent. and if he denies it only partly, then double the amount. As a matter of fact, when they are found to be dealing dishonestly, they shall be fined double the amount; while if their behaviour is found to be due to either negligence or poverty, the fine shall be only ten per cent.

When '*one*'—*i.e.*, the debtor—'*denies the debt*,' and when the other, *i.e.*, the creditor—'*falsely*'—dishonestly—demands it;—then both these, the creditor as well as the debtor would be '*proficient in dishonesty*,' and should be fined '*double the sum*';—'the sum' standing for what is denied; so that the sense is that the fine shall be double the sum that was denied.

The addition of the term '*proficient in dishonesty*' indicates that the penalty is imposed for proved dishonesty.—(59)

VERSE LX

ON HAVING BEEN SUMMONED AND QUESTIONED, IF ONE DENIES IT,—THEN HE SHALL BE CONVICTED BY THE MAN SEEKING FOR HIS DUE BY MEANS OF AT LEAST THREE WITNESSES, IN THE PRESENCE OF THE KING AND THE BRĀHMAṆAS.—(60)

Bhāṣya.

Being '*summoned*'—called, complained against, and let off on security,—'*and questioned*'—in the presence of the King, either by the judge or by other members of the Court—'Do you, or do you not, owe this amount to this person?'—if the man denies it; '*then he shall be convicted*,'—proved to be wrong—'*by the man seeking for his due*'—*i.e.*, by the person who is desirous of proving that the sum had been really lent by him,—'*by means of at least three witnesses*';—the compound '*tryavara*' means '*of whom three is the least number*,' the term '*avara*' standing for the minimum; the meaning being that if they are to be fewest, they should be *three*; otherwise they should be more than three;—*in the presence of the King and the Brāhmaṇas.*'

An objection is raised:—"The witnesses are naturally to be questioned before the persons by whom the case has begun to be tried; why then should it be asserted that this has to be done *in the presence of the King and the Brāhmaṇas*?"

There is no force in this. It is just possible that the witnesses might be questioned by deputing a trustworthy person to go to them; hence with a view to emphasise that the witnesses should be questioned personally by the trying persons, it has been reiterated here.—(60)

XII. Evidence

VERSE LXI

I SHALL DECLARE NOW WHAT SORT OF PERSONS SHOULD BE MADE WITNESSES IN SUITS BY WEALTHY MEN, AND HOW THE TRUTH SHOULD BE TOLD BY THEM.—(61)

Bhāṣya.

The verse introduces the section dealing with witnesses.

'*What sort of persons*'—*i.e.*, of what castes and with what qualifications.

'*Wealthy men*'—creditors.

'*Suits*'—dealing with money-transactions.

I shall describe now what sorts of witnesses shall be adduced; and also how the truth should be told by them, when questioned,—this also I shall explain.—(61)

VERSE LXII

HOUSEHOLDERS, MEN WITH SONS, RESPECTABLE NATIVES, AND MEN OF THE KṢATTRIYA, VAISHYA AND SHUDRA CASTES ARE COMPETENT TO ACT AS WITNESSES, WHEN CITED BY SUITORS;—AND NOT ANY AND EVERY PERSON, EXCEPT IN EMERGENCIES.—(62)

Bhāṣya.

'*Householders*'—persons who have married; the term '*gṛha*,' 'house,' standing for *wife*. Through fear of trouble falling upon their wives, these men do not act dishonestly; there are many who may be indifferent in regard to consequences to themselves personally, and may give false evidence, thinking thus—'I shall save myself by going away to some

other country, or even in this country I shall hide myself and acquire wealth and friends'; but when they have a family they have fears regarding the family and, setting aside all ideas of fleeing away and keeping themselves safe, and, in the best interests of the family, desist from dishonest dealings, through fear of punishments being inflicted upon their family.

'*Men with sons*;'—through love for their sons, such men shun all dishonest dealings; and further, people who have no wife and children, even though they may be quite honest, may not be available meettai th of the evidence being taken; because such people do not have any fixed abode.

'*Maulāḥ*,' '*respectable natives*';—this also is open to the same explanation. The terms stand for *natives born in the country*; these, being afraid of committing a sinful act among their own people, do not tell lies. The term '*maula*' denotes 'those who command *mūla* or respect'; but this is only an explanation of the denotation of the term; and the nominal affix denotes *nativity*. Men born in a country generally live there; so there is no incongruity in this.

'*Men of the kṣattriya, vaishya and shūdra castes*,'—not the Brāhmaṇa, as for him, constant study and teaching have been prescribed,—or the daily offering of the *Agnihotra* offerings; so that if the King were at a distance from him, and he were summoned to appear before him, it would lead to a dereliction of his duty; and it is with a view to guard against this that he is not mentioned as fit for being cited as a witness. But if the Brāhmaṇa happens to know all about the case, and there are no other witnesses, and the case is an important one,—then he is the most important witness. It is with a view to these latter cases that the exact form of question for the Brāhmaṇa-witness is going to be laid down:—'The Brāhmaṇa shall be examined by being asked *to speak*' (verse 88 *below*).

The term '*yoni*' (in the compound '*kṣattra-viṭ-shūdra-yonayaḥ*') is to be construed with each of the preceding terms; the meaning being 'those of whom the kṣattriya is the *yoni* or origin,' *i.e.*, those of the *kṣattriya* caste; or the right explanation of the compound may be with the Ablative—

'*kṣattrāt yoniḥ janma yasya*,' 'he whose birth is from the *kṣattriya* caste.'

These persons become competent witnesses only when the suitor declares—'these are my witnesses.' Those who come and volunteer to give evidence are not real 'witnesses.'

'*Except in emergencies*'.—Some people have explained that the 'emergency' meant here is the *absence of other witnesses.* But this is not right. Because untruthfulness is the only thing that disqualifies one from being a proper 'witness'; and this disqualification does not cease, simply because other truthful witnesses are not available. We do not mean to say that the phrase ('except in emergencies') permits the admissibility as witnesses of such persons as have been definitely declared to be disqualified, or of those who have reasons to depose falsely, or those who are interested in the case; all that we mean is that in the event of no other witnesses being available, the saving clause permits the calling of such Vedic scholars and other persons as may be conversant with the facts of the case, whose summoning might interfere with these religious practices,—and not of admitted liars.—(62)

VERSE LXIII

IN ALL LAW-SUITS TRUSTWORTHY MEN OF ALL THE CASTES, FULLY CONVERSANT WITH MORALITY AND FREE FROM AVARICE, SHOULD BE MADE WITNESSES; THE REVERSE OF THESE SHOULD BE AVOIDED.—(63)

Bhāṣya.

'*Trustworthy*,'—who never say what is not in conformity with facts; who always state facts as they are actually seen; with regard to whom people never have any suspicion of being liars.

'*Fully conversant with morality*';—who are always engaged in the performance of their religious duties, and who know them; *i.e.*, who act up to all that is enjoined in the Veda

and in the Smṛtis and sanctioned by usage, and who know everything regarding what leads to heaven and what to hell. Such people, perceiving that the telling of lies will lead to hell, are afraid of untruth.

'*Free from avarice*,'—*i.e.*, of magnanimous temperament, not liable to regarding a little wealth as much.

Each individual witness should be possessed of all these qualification; these are stated as subsidiary to the act of giving evidence; and *combination* is always intended in regard to what are subsidiaries.

'*Of all castes*';—that is to say, there is no restriction regarding castes. As regards the rule relating to the restriction of castes, that we shall explain later on. The meaning of the present text therefore is that 'men of any caste, according as they be available, should be cited as witnesses by all suitors.'

'*In all suits*,'—such as non-payment of debt and the rest.

Those who are the '*reverse*' of those specified above '*should be avoided*.'—Though as a matter of fact, when specially qualified persons have been specified, there is no possibility of the admission of those who are the 'reverse' of them,—yet the preclusion is in accordance with popular usage: ordinary men are often found to assert one thing and deny its contrary (in the same sentence); *e.g.*, they are found to say—"an operation alters a material substance, *and not what is not material*.' Further, the chief qualification of witnesses is *truthfulness*; and this cannot be ascertained in its positive form; in fact it can be ascertained only negatively, by finding out that the man *does not* pervert truth; this latter again is not perceptible because what the 'non-perverting of truth' means is the *telling of truth*, and in regard to what can only be *heard* by the ear, how can there be any *perceptible* cognition of the truth of what is stated by the words? If the facts were perceptible, there would be no need for seeking for any witnesses. And in regard to all things cognisable by means of words,

there is no amenability to any other means of cognition. So that it is only when it is found that in a certain person all those conditions are absent which are found to be conducive to telling lies, that the veracity—*i.e.*, his incapability to pervert truth—comes to be inferred. Thus it is with a view to indicate this that we have the words '*the reverse of these should be avoided.*'—(63)

VERSE LXIV

NEITHER INTERESTED PERSONS, NOR RELATIONS, NOR HELPERS, NOR ENEMIES, NOR PERSONS OF PROVED CORRUPTION, NOR THOSE AFFLICTED WITH DISEASE; NOR THE CORRUPTED SHOULD BE MADE WITNESSES.—(64)

Bhāṣya.

The following persons are named, as showing those persons in whose case causes for telling lies are likely to be present.

Among these are (1) '*interested persons*'—*i.e.*, persons standing related to each other in the relation of the creditor, the debtor and so forth. If a person loses a case through the deposition of one who happens to be his debtor, he is likely to become enraged at that very time and to press the debtor for immediate repayment of the debt; in view of this the debtor is likely to be swayed by a desire to keep the creditor pleased; and as such he cannot be a witness. Similarly, in a suit filed by the debtor against some one, his creditor would be swayed by the consideration that if the penniless suitor won his case, he would be able to repay his own dues; and as such he would be likely to depose falsely in his favour; for this reason he also cannot be a true witness.

Or, '*interest*' mean *purpose, object*; thus persons who have some end in view,—who stand to gain from either party,—or from whom either party is likely to gain something—are called '*interested*'—their interest in the case being similar to that of the parties themselves.

'*Relations*'—friends and relations knowing the ins and outs of the case,—*e.g.*, paternal and maternal uncles, etc.

'*Helpers*'—those who have stood security and others similarly situated.

'*Enemies*'—what these are is well known.

'*Persons of proved corruption*,'—those who have borne false evidence in other cases, or who have committed other forbidden acts.

'*Afflicted with disease*,'—*i.e.*, those affected by serious,—not paltry—ailments; this is what is implied by the term '*afflicted*.' Those labouring under such afflictions are likely to lose temper, to forget things and to perjure themselves.

'*Corrupted*,'—those who have committed a mortal sin, or have repeatedly committed minor sins. The term '*of proved corruption*' is meant to refer to those who have been convicted of, and punished for, a serious crime. Such persons are no longer regarded as '*corrupted*,' because they have been brought under discipline by having paid to the king the penalty for their sin.—(64)

VERSE LXV

THE KING SHOULD NOT BE MADE A WITNESS; NOR CRAFTSMEN, NOR ACTORS, NOR A VEDIC SCHOLAR, NOR ONE IN HOLY ORDERS, NOR ONE WHO HAS RENOUNCED ALL ATTACHMENTS.—(65)

Bhāṣya.

At the time that one is lending out money, the king should not be made a party to the transaction by being requested to the effect 'you shall be my witness.' Because if the king gave evidence, people would suspect him of partiality,—being all-powerful as he is; and this would lead to the detriment of the interest of one or the other;—nor would it be proper to question the king in the same manner as an ordinary witness. Though being an inhabitant of the same place, the king might corroborate statements by means of written notes, yet what is forbidden is his appearance as a regular witness of the ordinary class.

As for craftsmen and the rest, they should not be made witnesses for fear of injury to their business. These men live by the good-will of the people; and it is human nature that though men know (that their case is false), yet the mere consideration that they are losing it leads them to bear a grudge against the witnesses and others; and thus the universal good-will of the artisan and the rest becomes lost. Further, in as much as these men are of mean nature, they are prone to being diverted from the path of honesty, and hence becoming partial.

As regards the '*Vedic scholar*,' what is denied is not his trustworthiness, but the propriety of his appearing as a witness; just as in the case of the king. Because the fact of the man being a 'Vedic scholar' does not deprive him of his trustworthiness; on the contrary, it only intensifies it to a special degree; and this for the same reason that *Vedic scholarship* has never been found to be the instigator of perjury.

Similarly with those that follow.

'*Craftsmen*'—those that make a living by some crafts; such as cooks and the like.

'*Actors*'—dancers, singers and so forth.

'*Vedic scholar*'—one who studies the Veda; the person meant here is one who is always engaged in Vedic study. Or, 'Vedic scholarship' may be taken as indicating *the performance of religious rites*; and in that case the prohibition would apply to one who is engaged in such performance;—the work of the witness being prejudicial to such rites.

'*One in holy orders*'—the Religious student. As for those who merely wear the badge of the Wandering Mendicant, or of the heretical orders,—these are inadmissible on the ground of their following the heretical scriptures.

'*One who has renounced attachments.*'—This stands for those householders who have 'renounced the Veda.' '*Attachment*' means either the repeated enjoyment of sensual objects, or the undertaking of acts for ordinary worldly purposes—.(65)

VERSE LXVI

—NOT ONE WHOLLY DEPENDENT, NOR ONE UNDER PUPILAGE, NOR A PAID SERVANT, NOR ONE WHO ADOPTS FORBIDDEN OCCUPATIONS, NOR ONE TOO OLD, NOR A MINOR, NOR A SINGLE PERSON, NOR ONE BELONGING TO THE LOWEST CLASS, NOR ONE WITH DEFECTIVE ORGANS;—(66)

Bhāṣya.

'*One wholly dependent*':—this term is applied by usage to the born slave and such other persons who are entirely subservient to other persons.

Others read '*adhyādhīna*,' which means a *prisoner*.

'*One under pupilage*'—the son or the pupil (of either party), who is entirely under the sway of the Teacher. Or the term '*vaktavyaḥ*' may be taken as standing for one whose body has been deformed by leprosy or some such disease.

'*Dasyu*' here stands for the servant engaged on fixed wages,—so called because he 'accomplishes work' (*karmāni upasādayati*), as explained by the followers of the Nirukta. Since such a servant is engaged on daily wages, he is not absolutely dependent on others; that is why he has been mentioned separately. As persons belonging to this class live upon the wages earned, they would become deprived of their livelihood (if they deposed against their employer); and further, as their living is small, they are liable to corruption, hence untrustworthy also. As for the *thief* or *robber* (who also is called '*dasyu*'), as he is mentioned by a separate word (in the next verse), he cannot be taken as spoken of here by means of the term '*dasyu*.' Or, the term '*dasyu*' may stand for a *hard-hearted person*, one of cruel disposition.

'*Vikarmakṛt*' is one who adopts an occupation forbidden by the scriptures; *e.g.*, the *Brāhmaṇa* adopting the occupation of the *Kṣattriya*, or the *Kṣattriya* that of the *Vaishya* and so forth.

'*Too old.*'—One who is too old is subject to lapses of memory.

'*Minor,*'—one who is too young and not yet entered business.

'*A single person*'—in as much as 'at least three' has already been laid down,—which leaves no possibility of citing a single witness—the prohibition of 'a single person' is to be taken as permitting under certain circumstances, the citing of *only two* witnesses. Otherwise, in a case where, it being laid down that a document must be attested by three persons,—people might be led to think that if the third attestor is not present, the other two persons may *write*, but they are not admissible as a 'witness.'

'*Person belonging to the lowest class,*'—the barbarian, the *Chaṇḍāla* and so forth. These are percluded here, because they might be regarded as admissible by reason of their having their origin in the Shūdra-caste (who is permitted in verse 60).

"*One with defective organs*'—with his perceptive faculties rendered defective by bodily disease.—(66)

VERSE LXVII

—NOR ONE AFFLICTED, NOR ONE INTOXICATED, NOR ONE DEMENTED, NOR ONE TORMENTED BY HUNGER AND THIRST, NOR ONE OPPRESSED BY FATIGUE, NOR ONE TORMENTED BY LOVE, NOR ONE WHO IS IN A RAGE, NOR A THIEF.—(67)

Bhāṣya.

'*Afflicted*'—by the death of relatives and friends.

'*Intoxicated*'—senseless through wine.

'*Demented*'—seized by epilepsy, or obsessed by ghosts.

'*Tormented by hunger or thirst*'—Suffering from the pangs of hunger or thirst.

'*Fatigue*'—caused by much physical labour, involved in walking long distances, engaging in battle and so forth;—'*oppressed*' by it.

'*Love*'—Desire for intercourse with women. One who is separated from his beloved, as also one who is too much with her,—both of them are untrustworthy, on account of their mind being engrossed in the loved one, or in the fear of being separated from her.

'*In rage*'—who is too angry with some person,—even other than the parties of the suit; such a person having his mind entirely taken up with rage is unable to perceive things rightly, or to remember them correctly.

'*Thief*';—even though the thief also is '*one who adopts a forbidden occupation*,' yet since he has been mentioned separately, it has to be explained on the analogy of the expression '*go-balīvarda*' ('cows and bulls').—(67)

VERSE LXVIII

—WOMAN SHOULD GIVE EVIDENCE FOR WOMEN; AND FOR TWICE-BORN PERSONS SIMILAR TWICE-BORN MEN, VIRTUOUS SHUDRAS FOR SHUDRAS, AND MEN OF THE LOWEST CASTE FOR THE LOWEST MEN.—(68)

Bhāṣya.

In the case where both plaintiff and defendant are males, the evidence of females is not admissible; when however the suit lies between a male and a female, or between two females, —there women do appear as witnesses. But there is no restriction as to women alone—and no men,—being witnesses for women. In fact it is only in suits relating entirely to males that women are admissible as witnesses only in special cases, since the only reason that is given for excluding women is their fickleness, but there are some women who are as truthful as the best propounders of the Veda and as steady.

'*For twice-born persons similar twice-born men.*' As for the twice-born person of the higher class, and hence more trustworthy,—he may make certain statements whose veracity may be doubted,—and hence his words are not absolutely reliable. In fact the witness should be one who is accepted

by the parties as reliable; and this is possible only when he belongs to the same class; as it is only men of the same class who by reason of living in the same place are expected to know all about one another's transactions; while for others, it would be difficult to come into sufficiently close proximity with men of the lower strata; which, on the other hand, is always available for men of the same class. Similarly for men of inferior qualities, men of the same kind are to be witnesses; though this does not mean that persons with higher qualifications are not admissible.

The '*similarity*' here meant may be—(*a*) in caste, or (*b*) in occupation, or (*c*) in qualities, or (*d*) in action, such as the studying of the Veda and so forth, or (*e*) in character.

But all this restriction is not meant to be applicable to very important suits; because as a rule much reliability is not found in men with inferior qualifications.

'*For men of the lowest class*'—such as the *Chaṇḍāla* and the rest—men of the same low class. The compound '*antya-yonayaḥ*' is to be expounded as those who have their *yoni* or origin in the lowermost stratum.

This is meant to be only illustrative. The same rule holds good regarding other classes of people,—such as craftsmen, actors and so forth,—for whom also the *witnesses* should be '*similar*'—in caste, occupation, character, etc.; though these have not been mentioned in the text; because the same reason is present in their case also.—(68)

VERSE LXIX

IN THE CASE OF ANYTHING DONE IN THE INTERIOR OF A HOUSE, OR IN A FOREST, OR IN THE CASE OF INJURY TO THE BODY, —ANY PERSON WHO MAY BE COGNISANT OF THE FACTS MAY GIVE EVIDENCE ON BEHALF OF THE PARTIES TO THE SUIT. —(69)

Bhāṣya.

'*In the interior of a house,*'—any sudden act that may be committed, in the shape of defamation or assault or incest

or theft or other crimes;—*in the forest*—if any of the said crimes are committed;—or when the body is hurt by robbers or by other similar persons, and property is robbed; —or when some one has stood security for a debt, but there are no witnesses to it; or even though there were any, they could not wait till the time of the trial;—or when the debt is repaid in private;—in all such cases, any person '*who may be cognisant of the facts*'—who may have witnessed the transaction in question,—there being no restriction as to caste, or of similarity of standing and the like.

The phrase '*in the interior of a house*' stands for a secluded place in general; so that uninhabited temples and such places also become included. The mention of the '*forest*' also indicates the same thing.

Others have explained the clause '*sharīrasyāpi vātyayē*' to mean 'when the entire structure of the case is going to fall through, any man can be cited as a witness'; *i.e.*, when a case having been instituted is going to fall through, and there is no chance of its being re-instituted, then there should be no restriction as to the caste, or sex, or age, or rank or relationship and the like. This is what is further explained in the following verse.—(69)

VERSE LXX

IN THE EVENT OF (PROPER WITNESSES) NOT FORTHCOMING, EVIDENCE MAY BE GIVEN BY A WOMAN, BY A MINOR, BY AN AGED PERSON, BY A PUPIL, BY A RELATIVE, BY A SLAVE, OR BY A SERVANT.—(70)

Bhāṣya.

The mention of '*woman*,' thus permits departure from the rule laying down the sex of the witness; that of '*minor*' and '*aged person*' that prescribing his age; and that of '*pupil*' makes an exception in favour of relations in general;—this being mentioned only by way of illustration, indicating the admissibility of persons similarly circumstanced; hence the restrictions

regarding caste or position also are not to be strictly observed. But dear friends, or enemies or persons of proved dishonesty are not admissible in any case; nor any one in whom there is suspicion of the presence of motives for telling a lie, or those who have been found to be unreliable. Those however who have been found to be only slightly unreliable, but otherwise endowed with superior qualifications, may, in some cases, serve as witnesses. On this point we have the following assertion—'There may be one man among a thousand who would not tell a lie, under the influence of friendship or enmity or some other interested motive.'

In the event of other witnesses not forthcoming, *even a woman 'may give evidence*;'—this clause being construed from the preceding verse.

'*Pupil*'—indicates tutorial and sacerdotal relationship in general.

'*Relative*'—this term makes an exception in favour of what cannot be avoided; the sense being that even though the man may bear some relationship to the parties, if he is not very nearly related, he may be admitted. Hence the cousin, the uncle, the brother-in-law and such other near relatives should not be made witnesses, the name 'relative' being, in ordinary usage, applicable to these persons.

'*Slave*'—indicates the relation of *ownership* in general; that is why the master, the teacher and the priest are not to be made witnesses in any kind of suit. The term '*slave*' stands for the born slave and '*servant*' for one who serves on wages.

"The minor and others have been excluded on the ground of incapacity,—they are incapable of realising what is *evidence*, because of their mind being fickle and undeveloped; so that any exception in their favour, even in connection with emergencies, cannot be right. For certainly even in an emergency they do not acquire the right capacity. In fact, such an exception would be similar to the case where a man having said 'fresh rice shall not be cooked,' adds 'but if there is no fire it shall be cooked?'

There is no force in this objection; as it is in view of these considerations that we have the next verse.—(70)

VERSE LXXI

IN THE EVENT OF MINORS, AGED AND DISEASED PERSONS DEPOSING FALSELY IN THEIR EVIDENCE, THE JUDGE SHOULD MAKE UP HIS MIND REGARDING THE SPEECH BEING IRREGULAR; SO ALSO IN THE CASE OF MEN WITH DISORDERED MINDS.—(71)

Bhāṣya.

The meaning of this is as follows:—

The present verse is not meant to admit such minors and others as are either in absolute bondage or with disordered minds,—and hence entirely inadmissible. If it did so, it would be laying down something wholly new. The persons indicated by this as admissible are, in fact, those who are capable of understanding things, but whose minds are not quite steady. And what is meant is that the words of such persons should be fully examined with the help of reasonings, and they should be admitted as reliable only if it is found that they speak coherently and are not tainted with any suspicious signs of corruption. This is what is meant by the words—*In the event of their deposing falsely the judge should make up his mind regarding the speech being irregular.* That is to say, the falsity of the deposition should be deduced from its *irregularity*;—this '*irregularity*' consisting in the *incoherence of the statements* and *the absence of explicitness and clear utterance.*

All this is meant to indicate the condition of the minor and other persons; the meaning being that those who have been reduced, either by age or by disease, to a condition in which desiring to say one thing they utter something quite different, and that also indistinctly, should not be made witnesses. This ground for inadmissibility as witness can always be ascertained by direct perception; the other grounds,—such as the presence of love or hatred or avarice and so forth,—can be found out only by investigation; as has been already declared.

So also in the case of men with disordered minds,'—i.e.; those who are inherently of unsound mind.—(71)

VERSE LXXII

IN ALL CASES OF VIOLENCE, OF THEFT AND ADULTERY, AND OF ASSAULT, VERBAL AND CORPOREAL,—HE SHALL NOT INVESTIGATE THE CHARACTER OF THE WITNESSES.—(72)

Bhāṣya.

'*Sāhasa*,' '*violence*' ;—'*saha*' means '*force*'; and what is done *by force* is '*sāhasa*,' '*violence*'; whenever an improper act is done by a man, either on the strength of his being the king's favourite, or of his having a large following, or of his own bodily strength, or of the help of some powerful person, —it is called '*sāhasa*,' '*violence*.' *e.g.*, the tearing of cloths, the burning by fire, the cutting of the hands, and so forth.

The rest are all well known.

In such cases the character of the witnesses need not be investigated ;—this precludes the investigation that has been laid down above, under verse 60, *et seq.*; that investigation, on the other hand, which bears upon doubt regarding the man's reliability, on account of the presence of love, hatred, avarice and the like,—that must be done. The placing of this limitation upon what is laid down in the text is justified by the consideration that the present treatise is known to have a visible source, in the person of a personal author; as has been explained before.—(72)

VERSE LXXIII

ON A CONFLICT AMONG WITNESSES, THE KING SHALL ACCEPT THE MAJORITY; IN THE CASE OF EQUALITY (OF NUMBER) THOSE POSSESSED OF SUPERIOR QUALIFICATIONS; AND IN THE CASE OF CONFLICT BETWEEN EQUALLY QUALIFIED WITNESSES, THE BEST AMONG THE TWICE-BORN.—(73)

Bhāṣya.

In a dispute over the possession of land, *e.g.*, when several witnesses have been cited in proof of possession, if some depose to possession by the plaintiff, while others to that of the defendant,—then the king shall accept the statement of the majority.

When the number on both sides are equal, he shall accept the statement of those '*possessed of superior qualifications*,'—*i.e.*, of a larger number of qualities, or of a single quality, but in a very large degree, very much to the benefit of mankind.

When there is a conflict between two equally qualified witnesses, preference has to be given to the higher caste.

Lastly, when both sets are equal in all respects, then recourse should be had to ordeals, or some other similar means of discrimination.

'*Accept the majority*'—*i.e.*, accept as true the statement of the majority.

'*Conflict*'—making contradictory statements.—(73)

VERSE LXXIV

EVIDENCE BASED UPON WHAT IS DIRECTLY SEEN AND IS HEARD IS ADMISSIBLE; AND A WITNESS, TELLING THE TRUTH IN SUCH CASES, DOES NOT FALL OFF FROM SPIRITUAL MERIT OR WORLDLY PROSPERITY.—(74)

Bhāṣya.

"It has already been said (under 69) that evidence may be given by any person who may be 'cognisant of the facts of the case'; why then should any inadmissibility be suspected, in view of which it is now said that evidence on the basis of what is seen and heard is admissible?"

Our answer is as follows:—It has been said that the witness shall be warned by the person who he is going to

file his suit, saying—'you shall be my witness'; so that people might think that if a person has not been so warned, he shall be inadmissible; it is in view of this that the present declaration has been made. The meaning is that if a person happens to be close by when a certain transaction is being gone through and is cognisant of the facts, he is admissible as a witness, even though he may not have been warned by the parties, saying 'you will please bear in mind this transaction between us.'

The term 'directly' has to be construed with '*what is seen*,' as also with '*what is heard*'; so that if some one hears of a fact from one person, and from the former some one else hears it, then the person who has heard of it at second hand is not admissible as a witness; as it is only on hearsay, and not on the basis of any direct source of knowledge, that the man would know that 'this man has committed such and such a crime,' or that 'he owes such and such a sum to that man.'

'*What is directly seen*'—means direct knowledge of the facts of the case, bearing upon loan-transactions, assaults and so forth; *i.e.*, when these occurrences are actually seen with the eye; or '*directly heard*' in the case of *verbal assaults*,—such as 'I shall take away your wife,' and so forth,—and such admissions by the debtor as that 'I have borrowed such and such a sum from that man,' and so forth.

Though the root '*dṛshi*,' 'to see,' denotes all forms of *apprehension* (and as such includes auditory perception also), yet '*what is heard*' has been mentioned separately for the purpose of filling up the metre. All that is meant is that 'a person who has a right knowledge of the facts is admissible as a witness'; and the phrase '*what is seen*' is meant to stand for all valid kinds of knowledge; so that what is known by inference is also regarded as 'known'; similarly also all trustworthy Revelation, which is an authoritative means of knowledge in regard to imperceptible things also.

The second half of the verse is merely re-iterative, the telling of truth having been already enjoined before, and the fact of the liar losing both spiritual merit and worldly

prosperity being already known from other sources of knowledge.—(74)

VERSE LXXV

A WITNESS ASSERTING, IN AN ASSEMBLY OF NOBLE MEN, ANYTHING APART FROM WHAT HE HAS SEEN AND HEARD, FALLS DOWNWARDS INTO HELL AFTER DEATH AND BECOMES SHUT OUT FROM HEAVEN.—(75)

Bhāṣya.

The present verse describes the results accruing to the witness who deposes falsely.

The term 'seen and heard' is synonymous with 'apprehended,' as has been already explained; '*apart from this*' is what *is not apprehended*, or known to him;—if he asserts any such thing, '*in an assembly of noble men*,'—in the court consisting of honourable persons,—he '*falls downwards*'—headlong—'*into hell*'—to a place where he undergoes punishments at the hands of the god Yama;—'*after death*,'—'and *becomes shut out from heaven*,'—*i.e.*, falls down. That is, even though he may have committed deeds entitling him to go to heaven, yet he becomes shut out from it, by virtue of the more serious nature of the sin of perjury. It is not that the '*Karma*' calculated to carry him to heaven is destroyed by this sin; since every act is conducive to the fulfilment of its own reward (and does not interfere with that of others), with the sole exception of the Expiatory Rites (which have no results of their own, and only tend to nullify those of the corresponding sinful acts).—(75)

VERSE LXXVI

EVEN THOUGH NOT PUT DOWN AS A WITNESS, IF A PERSON HAPPENS TO SEE OR HEAR ANYTHING IN REGARD TO A CASE,—WHEN HE COMES TO BE QUESTIONED ABOUT IT, HE SHOULD SPEAK OUT EXACTLY AS HE HAS SEEN OR HEARD IT.—(76)

Bhāṣya.

"Under verse 74 it has been already declared that even though a man may not have been originally appointed as a witness, his evidence, as bearing upon what is directly known to him, is admissible; what then is the use of saying again that '*even though not put down*, etc., etc. '? What additional information is provided by this verse?

People might be led to think that—'when a man has been put down as a witness on the original document, his evidence is admissible as a matter of course,—but not so that of one who has not been so put down,—for if both were admissible, then there would be no point in entering any witnesses upon the document.' It is with a view to set aside this idea that the author has added the present verse. The former verse refers to cases where no witnesses have been put down, while this refers to a case where the document is duly attested by witnesses.

'*Not put down*'—not entered in the document.

'*Seeing*' and '*hearing*' have been already explained.

The rest is clear.—(76)

VERSE LXXVII

A SINGLE MAN, FREE FROM COVETOUSNESS, MAY BE A WITNESS, BUT NOT MANY WOMEN, EVEN THOUGH PURE,—BECAUSE THE UNDERSTANDING OF WOMEN IS NOT STEADY,—NOR OTHER MEN WHO ARE TAINTED WITH DEFECTS.—(77)

Bhāṣya.

The evidence of a single person having been declared to be inadmissible, the present verse lays down an exception in favour of one who is free from covetousness. So that if a man is known to be truthful, he is certainly admissible as witness. But women are never admissible,—be they one or many,—'*even though pure*'—possessed of high qualifications; and the reason for this is that '*the understanding of women*

is not steady' ; fickle-mindedness is the very nature of women ; while other qualifications are acquired, and as such liable to lapses through carelessness, idleness and so forth ; so that their inherent fickleness remains as a constant factor. Just as in the case of a dyspeptic,—even though a certain amount of appetite may have been regained by the use of butter and other things, yet even the least neglect on their part, brings on the inherent Dyspepsia again. Consequently, on account of this uncertainty, there can be no confidence in women, even though they be highly qualified.

As for the declaration (in 70) that 'in the event of no witnesses being available, women may be made witnesses,'—that refers to cases where they can be immediately questioned, and there is no possibility of their mind being tampered with by any person. When however there has been an interval of time, it is quite possible that they may be won over by the party whose case is weak and who is in fear of losing it. So that in such cases their evidence is not admissible at all.

'*Other men tainted with defects*;—even persons other than women,—and men,—who are '*tainted*'—beset—with such defects as love, hatred and so forth ; *i.e.*, men in whom those defects abound to a every large extent.

Though Love, Hatred and the rest, as being forbidden by the scriptures, have already been declared by name to be sources of suspicion and dishonesty,—yet they are referred to here again, for the purpose of including those that have not been so mentioned by name, and all writers sanction the mentioning of the general and special aspects of the same thing.

Some people have adopted the '*a*' before '*lubdha*' and construed the verse to mean that 'even though free from covetousness, a single man cannot be a witness,—how much less then one who is covetous,'—and hence as permitting the evidence of *two* men.

Though the form '*shuchyaḥ*' is impossible, in view of Pāṇini 4.1.44, yet some people justify it as being in accordance with the *Vārtika* on 4.1.45— (77)

VERSE LXXVIII

WHAT THE WITNESSES STATE NATURALLY, IN RELATION TO THE CASE, SHOULD BE ACCEPTED; APART FROM THIS WHAT THEY STATE FROM CONSIDERATIONS OF RIGHTEOUSNESS, IS USELESS.—(78)

Bhāṣya.

What the witnesses state naturally in regard to the case should be accepted; on the other hand, what they state, not quite naturally, but '*from considerations of righteousness*' '*is useless*',—*i.e.*, should not be accepted. The describing of things exactly as they were seen is what is meant by '*natural statement*'; what is otherwise than this,—*i.e.*, what is stated with the motive that what is said may not cause suffering to the poor party concerned,—'*is useless*'; *e.g.*, when one party complains—'I have been insulted by this person'—and the other denies it, the witness may say—'yes, he was insulted. but in joke, not through malice'; and in this case, the statement 'the man has been insulted' should be accepted; while the qualifying statement 'in joke,'—which had not been put forth by the defendant—and was made by the witness unasked (gratuitously)—need not be accepted.

'*In relation to the case*'—pertaining to the suit.

'*Useless*'—futile.

Others explain the verse as follows:—It may so happen that through shyness, a witness deposes in a halting manner,—but that alone need not be made a ground for rejecting his statement; what is to be done is that the nature of the witness should be examined by reasoning, and then it should be determined that 'this person speaks haltingly through shyness, what he says, however, is quite true?

But the real meaning is as explained above; so much attention need not be paid to this other explanation.—(78)

XIII. Exhortation and Examination of Witnesses

VERSE LXXIX

THE INVESTIGATING JUDGE SHALL QUESTION THE WITNESSES ASSEMBLED IN THE COURT, IN THE PRESENCE OF THE PLAINTIFF AND THE DEFENDANT, GENTLY EXHORTING THEM IN THE FOLLOWING MANNER.—(79)

Bhāṣya.

'*In the court*'—inside the court room; the compounding being in accordance with Pāṇini 2. 1. 40;—those who have presented themselves at the place of the trial; should be questioned '*in the presence of the plaintiff and the defendant*' —both;—they being '*gently exhorted*' in the manner described below,—not addressed harshly; because if addressed harshly, they would become frightened of the judge, and thereby losing the normal condition of their mind, they would be unable to recall all the details of the case; because fright always deprives people of their memory.

'*Prāḍvivāka*' Investigating '*Judge*' is the name given to the officer appointed by the king to try cases. Though the name, in its literal significance of 'questioning and judging' applies to the king also, yet we find the two names used separately, in such texts as—'If the Minister or the *Judge* (Prāḍvivāka) should pervert the details of a suit, the *king* himself shall look into it, etc.' (*Manu.* 9.234.)

In the term '*prāḍ-vivāka*,' '*prāṭ*' means *one who questions*, '*prchhati*;' it being derived from the root '*prachh*' to 'question' with the nominative affix '*kvip*'; the elongation

of the vowel and the change into 'ṭ' being analogous to the case of the roots '*vachi*,' '*shri*,' '*dru*' '*shru*,' '*pru*.' '*Prāṭ*' is the qualifying epithet to '*vivāka*,' which means 'one who judges or investigates knotty legal cases';—the nominative affix '*ghañ*' being added in accordance with *Pāṇini* 3. 3. 113, and the change of '*cha*' into '*ka*' being in accordance with '*Pāṇini*' 7. 3. 52. The term *prāḍvivāka* thus means the *questioning or Investigating Judge*.—(79)

VERSE LXXX

'WHAT YOU KNOW OF THE MUTUAL TRANSACTION BETWEEN THESE TWO PERSONS REGARDING THIS SUIT,—ALL THAT MAY YOU DECLARE FREELY; SINCE YOU ARE WITNESSES IN THIS MATTER.'—(80)

Bhāṣya.

'What you know in regard to the matter of this suit, any transaction, secret or open, that may have been carried on between these two persons,—all that declare freely; since you are witnesses in this suit.

'You are the sole authority in this matter; truth and untruth are in your hands'—thus addressed the persons cited as witnesses become encouraged.

'*In this matter*.'—Though the text mentions this formula in its most general form, yet, in as much as it is not possible for any person to be a witness regarding all things, it follows that the subject-matter of the suit should be stated here. Because until they are informed of the details they cannot understand the question.—(80)

VERSE LXXXI

'THE WITNESS, TELLING THE TRUTH IN HIS EVIDENCE, ATTAINS IRREPROACHABLE REGIONS, ALSO UNSURPASSABLE FAME; SUCH SPEECH IS HONOURED BY BRAHMĀ HIMSELF.—(81)'

Bhāṣya.

From this verse onward the text lays down the manner in which the witnesses are to be exhorted.

By telling the truth, the witness attains 'irreproachable regions,' in the shape of Heaven and the rest, which are the source of desirable results.

Or, the term '*loka*' may be taken in the sense of 'caste'; the sense in that case would be that 'he is born in a happy future life.'

In the present life also, he obtains '*unsurpassable fame*'—renown, superior to which there is none; *i.e.*, people bestow praise upon him.

Such—truthful—speech is honoured by Brahmā, Prajāpati, himself.—(81)

VERSE LXXXII

'STATING THE UNTRUTH IN HIS EVIDENCE, HE BECOMES FIRMLY BOUND IN VARUṆA'S FETTERS, HELPLESS DURING A HUNDRED BIRTHS. ONE SHOULD, THEREFORE, GIVE TRUE EVIDENCE.'—(82)

Bhāṣya.

The preceding verse encourages the witnesses by putting before them the spiritual and temporal results following from the telling of truth; the present verse describes how results accrue from saying what is contrary to truth; and the purpose of this also is to induce the witness to tell the truth.

'*Sākṣya*,' '*evidence*,' is the work of the witness; in that work, stating what is not true, the man becomes '*bound*'—tormented—'*in Varuṇa's fetters*,'—'*firmly*'—to a very great extent;—'*helpless*'—rendered totally dependent on others, even in regard to the operations of speech and the eyes,—'*during a hundred births*.'

'*Varuṇa's fetters*' are in the shape of terrible snakes or in the form of the disease of *dropsy*.

In order to guard against such calamities, the witness should state the truth;—such is the sense of the injunction implied by the text.

In the term '*ājātīḥ*,' the initial *ā* is not the indeclinable '*āṅ*' which denotes *limit*; for, if it were that or we would have the Ablative ending. Hence it is to be taken as a preposition meaning nothing; just like the preposition '*pra*' in such words as '*pralambatē*' and the like. The case-ending also is the Accusative. What the term signifies is *repetition*; the meaning being that the man suffers from dropsy repeatedly during one hundred births.—(82)

VERSE LXXXIII

'BY TRUTH IS THE WITNESS PURIFIED, BY TRUTH DOES MERIT GROW; HENCE THE TRUTH SHOULD BE SPOKEN BY WITNESSES OF ALL CASTES.'—(83)

Bhāṣya.

'*Purified*'—becomes pure; *i.e.*, purged of other sins also. The rest is clear.

VERSE LXXXIV

'THE SOUL ITSELF IS THE SOUL'S WITNESS, AND THE SOUL ITSELF IS THE SOUL'S REFUGE; DISREGARD NOT YOUR SOUL, THE BEST WITNESS OF MAN.'—(84)

Bhāṣya.

This same idea is made clear in the next verse.

VERSE LXXXV

'THE SINNERS INDEED THINK THAT "NO ONE SEES US"; BUT THE GODS SEE THEM, AS ALSO THEIR OWN INNER PERSONALITY.'—(85)

Bhāṣya.

The particle '*na*' is misplaced.

'*Sinners*'—perjurors and others—'*think*'—feel—that '*no one sees us*';—the particle '*iti*' shows that the whole clause is the object (of the verb 'think');—the construction of the clause being '*na naḥ kashchit pashyati.*'

'*The gods*'—named in the next verse—'*see them*'; as also their own sinner soul. This is what is meant by the assertion that 'the soul is the soul's witness.'

"But who is it that commits the sin? And who apart from him is the one that *sees*? In fact it is the soul itself that does all that is good or evil, and certainly there is no other 'inner personality' that sees it."

True; but the same soul has been represented as a 'god,' and as such spoken of as the doer of the act (of *seeing*); and this has been done for the purpose of preventing the man from telling a lie, the sense of the exhortation thus is—

'You know that the real nature of your true personality is *divine*, which is within the body, while your exterior body is not your soul;—hence, for the nourishing of this latter, do not commit a single act;—hence too *do not disregard or despise your soul, the best witness of man.* Other witnesses give evidence only in this world, while the soul bears evidence even after death; hence one should be afraid of such a witness.'

The liar may be led to think—'when I am born again with another soul, what will my present soul, which is the seer, be able to do to me?' But this is not so; since '*the soul is the soul's refuge*' (verse 84). Apart from his soul, there

is no refuge for man; and there are not two souls for a single man.

Others hold that the difference is that the soul spoken of as the '*witness*' is the supreme one, while the souls born in the persons of the world are those that are under his sway.—(85)

VERSE LXXXVI

'HEAVEN, EARTH, WATER, HEART, MOON, SUN, FIRE, DEATH-GOD, WIND, NIGHT, THE TWO TWILIGHTS, AND MORALITY KNOW THE CONDUCT OF ALL CORPOREAL BEINGS.'—(86)

Bhāṣya.

The question ending as to who are the gods that see the sin committed secretly and in private, the text puts forward present verse.

The term '*heart*' stands for the subtle spirit located in the heart. The Heaven and the rest are spoken of as 'seers' figuratively;—though they are insentient, they are represented as sentient. According to other philosophical systems, all the great elemental substances are portions of gods, and as such actually sentient; *e.g.*, it is described that the earth went to Brahmā, in order to seek for help in relieving her of the burden of sinners.

The gods being all-pervading, there is nothing unknown to them; hence they know the conduct and character, as also the good and bad points in the body of the soul.—(86)

VERSE LXXXVII

IN THE PRESENCE OF GODS AND BRĀHMAṆAS, DURING FORENOON, THE JUDGE, PURE HIMSELF, SHALL ASK THE TWICE-BORN PERSONS, WHO HAVE BEEN PURIFIED AND ARE FACING EITHER THE NORTH OR THE EAST, TO GIVE EVIDENCE.—(87)

Bhāṣya.

'*Gods*'—Durgā, Sūrya and the rest, set up in the form of images.

'*Purified,*'—*i.e.*, who have performed the rites of bathing, mouth-rinsing and so forth.

'*Pure,*'—the judge himself should have purified himself in the same way.

'*Truth,*'—this is a mere re-iteration of what is already implied; and it serves the purpose of filling up the metre. —(87)

VERSE LXXXVIII

HE SHALL QUESTION THE BRĀHMAṆA WITH THE WORD 'SPEAK,' THE KṢATTRIYA WITH 'SPEAK OUT THE TRUTH,' THE VAISHYA BY SINS PERTAINING TO KINE, GRAIN AND FOOD, AND THE SHUDRA BY ALL THE SINS.—(88)

Bhāṣya.

"On what basis do we have the instrumental ending in *gobījakāñchanaiḥ*? If it be said to be due to these being *instruments* in the act of *questioning,* that cannot be; as it is the word (and not the kine, etc.) that are the *instruments,* a means of questioning."

There is no force in this objection. We have to construe the words in such a manner as to make the 'kine,' etc., instruments of the questioning. The word '*pātakaiḥ,*' '*sins*' has got to be construed both ways, so that we have the phrase '*gobījakānchanaiḥ pātakaiḥ,*' which gives the meaning that 'he should ask them by mentioning sins pertaining to the kine, grains and gold,' *i.e.*, the form of the question to be employed should be—'if you tell a lie, you would be incurring the same sin that follows from stealing or killing the cow.'

Similarly, by mentioning the sins going to be enumerated

(in the next verse), he should question the *Shūdra.* The term '*sin*' here should be taken as standing for *words expressing sins*; because the sins themselves could not be the *means or instrument* of the *questioning*, as pointed out above. —(88)

VERSE LXXXIX

'WHATEVER REGIONS HAVE BEEN ASSIGNED TO THE SLAYER OF THE BRĀHMAṆA, TO THE MURDERER OF WOMEN AND CHILDREN, TO THE BETRAYER OF FRIENDS AND TO THE INGRATE,—THOSE SAME SHALL BE THINE IF THOU SPEAKEST FALSELY.'—(89)

Bhāṣya.

'Those regions, in the shape of hell and the rest, which are reached by those persons who have killed a Brāhmaṇa, shall be yours, if you tell the untruth; therefore you should tell the truth,'—such is the exhortation.

'*The betrayer of friends*'—he who ruins the Brāhamaṇa and others by depriving them of their wife and property.

'*The ingrate*': he who forgets the benefits conferred upon him, and causes injury to that same person who had conferred those on him; and the *perjuror* suffers the same pains that befall such a person.—(89)

VERSE XC

'WHATEVER MERIT, GOOD MAN, YOU MAY HAVE ACQUIRED SINCE YOUR BIRTH, WOULD GO TO THE DOGS, IF YOU SPEAK FALSELY.'—(90)

Bhāṣya.

'*Would go to the dogs*'—would be futile, so far as you are concerned. Others however explain that 'going to the dogs' is indicative of positive harm; the sense being—'the

merit of the man becomes thrown away, in the same manner in which a man, having earned, with great difficulty, gold and other excellent treasures, were to throw it all into an unclean stream': it has been pointed out more than once that the merit acquired by one person cannot go over to another.—(90)

VERSE XCI

'YOU THINK YOURSELF, BLESSED MAN, THAT "I AM ALONE"; BUT THERE EVER SITS IN YOUR HEART THE SILENT WATCHER OF VIRTUE AND VICE.'—(91)

Bhāṣya.

'*Watcher*'—seer—'of virtue and vice';—'*mauni*'—silent. —(91)

VERSE XCII

'THE GOD YAMA, THE SON OF VIVASVAT, WHO SITS IN YOUR HEART,—IF YOU HAVE NO QUARREL WITH HIM, YOU NEED NOT VISIT THE GANGĀ, NOR THE KURUS.—(92)

Bhāṣya.

With a view to strike terror in the heart of the man, it is next described who is the '*silent watcher*' (mentioned in the preceding verse).

You have heard of the God, who is the destroyer of the body and property and other things belonging to all living beings, and who punishes them with torments; that God resides in your heart, and not away from you; in the event of committing a wrong, he will punish you immediately;—and do not think that being your own soul, he will ignore your fault; because no one is his 'own.'

'*If you have no quarrel with him*'—if he is satisfied with you and trusts you, then what would be the need for

your going to bathe in the Gaṅgā for the cleansing of your sins? What too would be the need for going to *Kurukṣetra*? For the reward of going to these places consists in the destruction of sins and acquiring of merit; and all this is obtained by the man here and now, if he is at peace with the Supreme Self (within him). As a matter of fact, the soul of a sinner is never free from fear; the unbeliever also has doubts regarding what is going to happen to him at death.

The *Gaṅgā* is a river that purifies: and in '*Kurukṣetra*' it is the land itself that purifies.—(92)

VERSE XCIII

'HE WHO GIVES FALSE EVIDENCE SHALL GO FOR ALMS, WITH A POTSHERD, TO THE HOUSE OF HIS ENEMY,—NAKED AND SHORN, TORMENTED WITH HUNGER AND THIRST, AND BLIND.'—(93)

Bhāṣya.

'*Potsherd*'—a piece of the cup or some other earthenware pot. The rest is easily intelligible.—(93)

VERSE XCIV

'HEADLONG, IN BLIND DARKNESS SHALL THE SINNER FALL INTO HELL, WHO, ON BEING INTERROGATED IN THE COURSE OF A JUDICIAL INVESTIGATION, ANSWERS THE QUESTION FALSELY.—(94)

Bhāṣya.

On being questioned regarding the subject-matter of the investigation, if one should state what is not true,—by that sin he falls into '*hell*'—the place of punishment—with his feet held upwards and the head hanging below—into intense darkness. In ordinary darkness, people can see something, but in the darkness referred to, nothing can be seen; hence the epithet '*blind*.'—(94)

VERSE XCV

'HE WHO, HAVING ENTERED THE COURT, BEARS TESTIMONY TO WHAT IS CONTRARY TO FACTS AND WHAT HE HAS NOT SEEN, SWALLOWS FISH ALONG WITH THE BONES,—JUST LIKE A BLIND MAN.'—(95)

Bhāṣya.

"*Contrary to facts*"—untrue.

The pleasure produced by the eating of the fish is not equal to the pain caused by the swallowing of the bones; similarly, there is a slight pleasure produced by the little money that is received (as bribe), but the subsequent suffering is very great; it is on this basis that the analogy of fish-eating has been cited.—(95)

VERSE XCVI

'THE GODS DO NOT REGARD ANY PERSON IN THIS WORLD AS SUPERIOR TO HIM, WHOM HIS KNOWING SOUL DOES NOT DISTRUST, WHILE HE IS SPEAKING.'—(96)

Bhāṣya.

'*While he is speaking*'—while the witness is giving evidence.

'*Knowing*,'—cognisant of what is true and what is not true.

'*Soul*'—the Inner Guide.

'*Does not distrust*,'—has no doubt as to whether the man will tell the truth or not; is sure that he will tell the truth.

He whose innermost soul is so confident,—to such a person the gods regard no one as '*superior*'—more praiseworthy.

"Who is the *speaker*, and who, apart from him, is the *distruster*? In fact, the soul is one only; when he, through his effort, utters speech, he becomes the '*speaker*; and the

same entity that comes to have 'distrust,' when he is faced by doubts regarding *what* and *how* things are going to happen; so that there can be no difference between the two."

This is quite true; but the statement in the text is based upon an assumed distinction; just like the statement 'one injures his soul by his own soul' (*Bhagavad-gitā*).—(96)

VERSE XCVII

'LISTEN NOW, GENTLE FRIEND, IN DUE ORDER, HOW MANY RELATIVES, BY NUMBER, ONE DESTROYS BY GIVING FALSE EVIDENCE, IN WHAT CASES.'—(97)

Bhāṣya.

The present text introduces a section where it is pointed out that the degree of sin committed by the perjurer varies with the nature of the matter of the suit.

When this fact is asserted in the form of an address, it serves the purpose of indicating its importance, when something is said in secret, it is regarded as some slight matter, not of any importance; but what is said now is important, and hence should be listened to with attention,—such being the implication of the hortatory form adopted.

The term '*gentle friend*,' in the singular form, is intended for *Bhṛgu* alone from among the several whom Manu is instructing.

'*Yasmin sākṣyē*';—the two locatives are not in apposition; the meaning is—'the false evidence that is given in regard to a certain subject-matter';—so that the locative denotes '*matter*,' while the locative absolute means something quite different. Or the diversity in the *evidence* being in accordance with the diversity in the *matter*, the two locatives may be in apposition also.

The term '*tāvat*' is generally used to denote ***extent***; and as ***extent*** is of various kinds, the author specifies it as being '***by number***.'

'*In due order,*'—for the purpose of easier understanding; when a subject is stated in due order, it becomes easily understood. The '*order*' meant here is with reference to the *number*; as it is number that is going to be described in the following verses.—(97)

VERSE XCVIII

'HE DESTROYS FIVE BY FALSE EVIDENCE REGARDING ANIMALS; HE DESTROYS TEN BY FALSE EVIDENCE REGARDING KINE; HE DESTROYS A HUNDRED BY FALSE EVIDENCE REGARDING HORSES, AND A THOUSAND BY FALSE EVIDENCE REGARDING MEN.'—(98)

Bhāṣya.

The compound '*pashvanṛtam*' is to be expounded as '*pashunimittam-anṛtam,*' 'false evidence regarding animals,'—on the analogy of the compound '*shākaparthivaḥ.*'

False evidence destroys five relatives;—this 'destroying' consists in making them fall into hell;—the five relatives being—(1) the father, (2) the mother, (3) the wife and (4) (5) a couple of children (son and daughter).

"How can the result of sin committed by one accrue to another?"

Our answer is that it is on account of association that one person goes to heaven or to hell, by virtue of the virtuous or vicious acts committed by another.

What is really meant is that the perjurer is abandoned by the said relatives;—or, that he incurs the sin that would accrue from the killing of the relations; and hence even though not actually killing them, he is described as 'destroying' them, on the ground that the spiritual effect of the two acts is the same.

This however is a purely hortatory exaggeration; and it is not meant that the man actually commits the act; if this latter were meant, then the man would be subject to the expiatory rites prescribed in connection with the actual *killing*

of the said relatives; while as a matter of fact, the perjurer is subjected to only those sites that have been prescribed in connection with the sin of *perjury*.

The gradual increase in the number (of relatives destroyed) is meant to indicate the increasingly heavier character of the expiation necessary; and the statements are not meant to be taken as literally true. Hence all that is meant is that each succeeding act of perjury (mentioned) makes the man liable to a heavier expiation than the preceding one.

On being questioned as to the person to whom a certain slave belongs, if the witness deposes falsely,—it is a case of '*false evidence regarding men*.'—(98)

VERSE XCIX

'DEPOSING FALSELY IN REGARD TO GOLD, HE KILLS THE BORN AS WELL AS THE UNBORN; BY FALSE EVIDENCE REGARDING LAND, HE KILLS ALL; NEVER TELL A LIE REGARDING LAND.'—(99)

Bhāṣya.

Question—"How can association with the sinful person affect those not yet born,—that it is said that *the man kills the born as well as the unborn?*"

It has been already pointed out that all this is merely a hortatory exaggeration.

'He kills all by deposing falsely in regard to land; never tell a lie regarding land';—this direct form of address has been adopted for the purpose of indicating the gravity of the offence.

Question—"What is it that is called *Land*?"

Answer—It is what is known as globe, the earth with hilly protuberances, extending to the ocean.

Objection—"But who can be the owner of all this extensive earth? Who too can take it away by force? For there is no king over the whole earth. To this effect there is the earth's song addressed to Vishvakarman Bhauvana,—

the latter term being his name derived from his father's—'no mortal can give me away';—which means that there is no one who owns the entire earth,—'I shall sink into the midst of the water, having heard that he is desirous of having intercourse with me,'—this sinking within water implying the futility of the gift,—'vain is thy promise to give me away'—'just as what is thrown into the water becomes useless, so also is your promise to give the Earth to Kashyapa useless.' (*Shatapatha Brāhmaṇa*, 13. 7. 1. 15). The meaning of all this is that the earth is the common property of all men, to be equally enjoyed by all; and kings are appointed only for taking care of it. Thus then, either the *giving away* or the *taking away* of the whole extent of this earth being impossible, how can there be any disputes regarding its possession?"

Answer—True; but, just as the entire earth is spoken of as '*bhūmi*,' '*land*,' so also are fields, villages and platforms and over these latter, ownership is certainly possible; and the *making over* or the *taking away* also of such ownership is directly perceptible; the 'taking away' of this consists in asserting ownership in an improper manner; and the mere dismantling of a house or the cutting of a tree does not constitute the act of 'taking away.' Hence if a man walks over another man's land, or takes clay out of it, he is not said to 'take away the land.'

"But the *Mīmānsakas* have declared that 'It cannot be the land, because it is common to all' (Jaimini, 6. 3. 3) [where the word 'land' stands for the whole earth]."

But the term is found to be used in the sense also of *parts of the earth*, by the revered Kṛṣṇadvaipāyana, who has declared as follows, in course of the description of the duty of charity—'On the earth the king should permit the duty of charity by others also; this is a sacred treasure laid down for kings' [which refers to the gift of land]. As for the assertion of the Mīmāmsakas regarding 'land' being 'common to all,'—this refers to the entire globe, to roam about over which all men are equally entitled, and which therefore, cannot be *owned* by any one; how then could it be given away? In

accordance with this view, villages and towns can be given away at the *Vishvajit* sacrifice. Others however quote the words 'they present as sacrificial fee, the *bhūmi with the exception of the platform and the wife's room*,'—and explain, that, since any such exception would not be applicable to the entire earth, the giving must refer to *fields* and such other parts of it only.

In view of the term '*vadīḥ*' (singular) in this verse, the words 'listen, gentle sir' (of verse 97) should be taken as addressed to the *witness*, and not to the *pupil*.

All the words in the second person contained in verse 88 onwards (up to 92) are meant to be addressed to the *shudra* witness, as is clear from the gravity of the offence indicated, and also from the similarity in the verbal forms used;—while from verse 93 onwards are to be addressed to all witnesses. That such a break in the construction is intended is shown by the adopting of a different verbal form ;—the Second Person is used in the former set of verses while in the latter we have the Third Person, which clearly indicates dissociation from the previous context.—(99).

VERSE C

'THAT CONCERNING WATER THEY DECLARE TO BE SIMILAR TO THAT CONCERNING LAND ; AS ALSO THAT RELATING TO THE SEXUAL ENJOYMENT OF WOMEN, AND TO GEMS, WATER-BORN AS WELL AS GRANITIC.'—(100)

Bhāṣya.

The sin accruing from false evidence relating to the water—much or little—contained in wells, tanks and other reservoirs—is similar to that in the case of land.

'*Sexual enjoyment of women*';—*i.e.*, in answer to the question—' by whom has this woman been ravished sexually.'

'*Water-born gems*,'—such as the pearl;—'*granitic gems*'—the emerald and the like;—the term '*gems*' being construed both ways. There are various kinds of gems,

waterborn and granitic; hence all that was necessary was to mention the '*gems*' only; and the mention of the qualifying epithet must be taken only as serving the purpose of filling up the metre.

'*Water-born*'—produced in water.

'*Granitic*'—formed from stones.—(100)

VERSE CI

'HAVING NOTICED ALL THESE EVILS PROCEEDING FROM PERJURY, SPEAK OUT DIRECTLY EVERYTHING EXACTLY WHAT YOU HAVE SEEN AND HEARD.'—(101)

Bhāṣya.

Give up all suspense and hesitation, speak out what you have seen and heard.—(101)

XIV. Some witnesses to be treated like *Shūdra*

VERSE CII.

'HE SHALL TREAT LIKE SHUDRAS THE BRĀHMAṆAS WHO TEND CATTLE, WHO ENGAGE IN TRADE, AND WHO ARE CRAFTSMEN, ACTORS, MENIAL SERVANTS OR MONEY-LENDERS.'—(102)

Bhāṣya.

'*Craftsmen*'—artisans; carpenters, blacksmiths, cooks and so forth.

'*Actors*'—dancers and singers.

'*Menial servants*,'—those who serve others for a living; known as '*dāsa*.'

'*Money-lenders*,'—who live upon interest on money lent.

These persons, even though they be Brāhmaṇas, should, in the matter of taking evidence and administering ordeals,—that this is meant is clear from the context—be '*treated*'—*i.e.*, questioned—'*like Shūdras*'; but not so in other matters. That is to say, in taking evidence, the *Shūdra* is not questioned with reference to charity, virtue and the like, and in ordeals, he is subjected to the ordeal by fire; and the same treatment should be meted out to the persons mentioned here.

Though *ordeal* has not yet been spoken of in the present context, yet what is said here is taken as applying to the case of ordeals also, because they are dealt with immediately after the present section, and immediate sequence also is a basis of relationship; the two subjects therefore are closely interrelated.—(102)

XV. False evidence permissible in special cases

VERSE CIII

IN SOME CASES, A MAN WHO, THOUGH KNOWING THE TRUTH, DEPOSES OTHERWISE, THROUGH PIETY, DOES NOT FALL OFF FROM HEAVEN. THIS IS A DIVINE ASSERTION THAT THEY REPRODUCE.—(103)

Bhāṣya.

Though deposing otherwise than the truth, the man does not fall off from heaven ; *i.e.*, even though he has given false evidence, he does not incur sin.

" Is this so at all times ? "

The text proceeds to say that it is not so always ; but only in cases where it is done '*through piety*,'—*i.e.*, through such pious motives as pity and the like ; '*cases*' means *suits*. How piety forms the motive is going to be shown in the next verse.

What is said here by the author is not out of his own mind ; even previous writers on Smṛti have reproduced this 'divine assertion.' " What divine assertion ? "—The assertion that 'one should give false evidence from considerations of piety' has *emanated from the gods* ; and having heard that, Manu and other writers have reproduced it.

This is only a praising of false evidence under special circumstances.

Others however have explained this verse as supplementing the previous injunction ; and under this explanation what is said here should apply to what has been said regarding the cattle—tenders and other Brāhmaṇas being exhorted like

Shūdras, when asked to give evidence. People might ask how a Brāhmaṇa should be exhorted like a *Shūdra*; and the text explains that there can be nothing wrong in this, since Manu and other writers have made the declaration that they are to be treated as Shūdras, and they are the sole authority in matters relating to right and wrong.

Witnesses should tell the truth; and that in the manner in which it is enjoined; so that in a case where lying is righteous, that should be regarded as right.—103

VERSE CIV

WHERE THE TELLING OF THE TRUTH WOULD LEAD TO THE DEATH OF A SHUDRA, A VAISHYA, A KṢATRIYA OR A BRĀHAMAṆA,—IN THAT CASE FALSEHOOD SHOULD BE SPOKEN; AS THAT IS PREFERABLE TO TRUTH.—(104)

Bhāṣya.

There is the general prohibition.—'one shall not speak a falsehood'; and the present verse declares that this prohibition applies to cases other than that entailing the death of the *Shūdra* and others; and it does not actually enjoin the telling of falsehood. For if it meant the latter, then any co-ordination between this and the said general prohibition would be impossible.

" What is the condition meant to refer to what is asserted here? The phrase *in that case* cannot be taken as indicating that *condition*; as this phrase qualifies *death*; and as death is not existent at the time, it could not be the required *condition*; for if it were, the meaning would come to be that 'when the death has been brought about, falsehood should be spoken'; and this is not what is meant."

The term '*where*' referring to the *case*, the phrase '*in that case*' also would refer to the same. Hence the meaning comes to be that—'in a case where the party defeated becomes liable to death'; and this certainly can serve as the required condition.

As for the *king's wrath*, this cannot be regarded as the required *condition*; as it is an uncertain factor, and also because any penalty inflicted entirely through wrath would be illegal.

For all these reasons the only right course is to take the text as supplementary to the prohibition of lying.

In connection with Gautama's test, there is no chance of its being taken as an injunction of lying; for all that it says is—'there is nothing wrong in lying, if a man's life is dependent upon it' (13.24).

In the face of such prohibitions and sanctions, it depends on the will of the man whether he shall tell the truth or untruth; so that arguing in his mind that by telling the truth, he becomes the cause of the death of the accused, and hence the transgressor of the law that 'one shall not kill any living being,'—the man decides to tell the untruth; and in this he does what is quite reasonable.

Q. "All that the man does is to answer the question that is put to him; he does not kill; and without killing, how can he be tainted with the sin of *killing?*"

A. The man being free to say what he chooses, if, on account of his deposition, the accused comes to be killed by the king, he does become a *means* of that killing, and hence its *perpetrator* or *agent.*

Q. "Every kind of *means* does not become an *agent, e.g.*, when nobility is acquired by wealth, or "fame by learning," wealth and learning are the *means* but not the *agents.* What makes a certain thing the *means* is its capacity to bring about a special kind of effect in the form of substance or quality. Even when an action is spoken of as such an effect—*e.g.*, in the assertion 'cooking is done by fire' —the action that is spoken of by the verbal noun ('cooking') is in its *accomplished* form (and hence as good as a *substance* or a *quality*; since an *action* is that which is still *in course of being accomplished*). But the effect spoken of in the present context is of a totally different kind—scriptural or spiritual, and not temporal,—being brought about by what is declared in the scriptural texts; and the *Agent* of such an

act is not of the same character as that of the former. If the character of the *Agent* were to consist in *command and prayer* —which mean *ordering* and *requesting*,—then, in the case of such assertions as 'make the corns become hot,' the use of the causal form would be impossible, as it refers to the corns, which are *not sentient* (and hence cannot have any *command* or *prayer* addressed to them)."

All this has already been answered by the commentators, who have explained that in such cases the action of the principal agent is imposed upon (represented as belonging to) the subordinate (insentient) agent. Such imposition upon insentient objects we find in such expressions as—'alms-begging affords shelter,' 'the dry cow-dung teaches,' and so forth. In such cases, the help accorded (in the shape of *lodging* and *teaching*) is not by the insentient things (*begging* and *cow-dung*), but by a different agent, who is the real *instigator* of the acts. The act of teaching, for instance, is prompted by the Injunction of having recourse to a Teacher; and when the teacher is doing this act of teaching, he is hampered by cold and such other hindrances; and this cold is removed by the dry cow-dung (being burnt as fuel); thus it is that the action of 'teaching' itself comes to be imposed upon the cow-dung. An 'agent' or an 'instigator' is so called because of the *impelling* or urging done by it; and we do find such *impelling* being done also by such insentient things as wind and water, in reference to the burning of fire and floating of wood (respectively). And in all such cases as there can be no *directing*, etc., done by the Fire, the words would have to be regarded as used in a figurative sense.

If again the character of the 'agent' be held to consist in doing something conducive to the act in question,—then this could only be in accordance with the actual action of the Agent concerned, which action would be in the form of *preparing* for the main act; for one who *arranges* for an act is said to *have it done*; when for instance, for a person who is going to dine, one man brings up the dish and another serves the rice and so forth; similarly when a man is going to do the

act of killing, one man offers him the weapon, while another, by recounting the misdeeds of the man going to be killed, kindles the rage of the person going to kill him. In all such cases, though each of these other abettors does not do any directing or urging, yet, in as much as he helps to bring about conditions favourable for the fulfilment of the act concerned, becomes a sort of an 'agent' in it, in the sense that what he actually does is conducive to the said act.

According to this view, the cow-dung and the Teacher would stand on the same footing (as agents in the act of *teaching*).

But in this connection also that principal instigator is the 'Agent' without whom the act cannot be accomplished and who does not fall within the category of any other particular case-relation. Without the Teacher, the cow-dung itself cannot become a prompter of the teaching; while the teacher can do the teaching, even without the cow-dung, and hence the cow-dung becomes the subordinate factor. As for those things that are definitely recognised as the 'instrument,' or such other factor conducive to the accomplishment of an act,—these also would be clearly subordinate. For instance, when one sees a man going to a remote village again, even on slight business, he says 'the horse *makes* Devadutta *go*.'

Question.—"As a matter of fact, in connection with the nomenclature of the case-relations, there is no reference made to the greater or less intimacy of the determining relation; what difference then is there between the cow-dung and the Teacher (so far as the character of the nominative agent of the act of teaching is concerned)? The distinction that you have drawn between the two is a mere gratuitous assumption of yours, and there is no reality behind it; while all Injunctions and Prohibitions refer to realities. Further, it has also been declared that 'the exact nature of case-relations is determined by the wish of the speaker.' Under the circumstances, if a certain speaker wishes to speak of a non-agent as the agent, the Injunctions and Prohibitions relating to the Agent could become applicable to him. For instance,

when enunciating the Sins, Manu himself mentions 'the buyer, the seller, the cooker and the server' (as the *killer* of the animal whose flesh is eaten). From this it is clear that the maxim that you have propounded is meant for the purpose of lending support to the position taken up by yourself, and it does not touch the reality of things."

It is for this very reason that the commentators have agreed that if the mere doing of something conducive to an act were the condition of being the 'agent,' then every kind of cause (of the act) would have to be regarded as 'agent.' So that when one gives food to a man, and this man, being a glutton, happens to die by over-eating,—the man who gave the food would become the agent in the act of killing. As a matter of fact, however, the action of the feeder has not been prompted by the idea of killing the man; it was prompted by the idea of a totally different act, in the form of *feeding*, and not in that of *killing*; nor was it prompted by hatred or jealousy or any such feeling. So that even though the man may have helped to bring about the death, yet he does not become the 'agent' of that act. That is all that we have to say. In a case where one takes away lands or gold, etc., belonging to another person, and the latter dies through grief caused by the robbery,—it has to be considered whether the robber becomes the 'agent' in the act of *robbing only*, or in that of *killing* also.

"What is then to be 'considered' in this connection? The relation of Cause and Effect can be ascertained by infallibility; and the robbing of land or gold is not an *infallible* cause of death, to the same extent as striking with the sword or starving is."

What sort of 'infallibility' is meant here? It may be held that if by a certain thing, some one dies, while others do not,—then the agency or causal efficiency of that thing (towards bringing about death) would be regarded as 'fallible.' But any such principle would be defective, on account of the divergence in the constitution of men. One and the same medicine is found to be beneficial to a man of phlegmatic

constitution, but harmful to another. In fact in the case of all men, the appearance of new forces is dependent upon such contingencies as those of disposition, place, time, nature and accessories. In fact in the cases cited also, the death is dependent upon the wealth and progeny of the man concerned, as also upon thirst and other living organisms (?). For instance, if the man robbed is of a very passionate disposition, or liable to give way to grief, the trouble caused by the robbery becomes conducive to death. And in such a case can the agency (of the robber in the act of *killing*) be denied? On the other hand, if the man is easy-natured, he ignores the robbery. This same reasoning applies also to the case of the man who, being obsessed by grief, commits suicide by having recourse to starvation, falling from a precipice, taking poison,—laying the blame of it upon other persons.

"But in such cases, in as much the taking of poison and other well-known causes of death would be present, the wrong done in the shape of robbing the land, etc., could not be regarded as the cause of the death."

But since the man has recourse to the means of death, by reason of being stricken with grief, caused by the robbery,—the robbery becomes the indirect cause of the death.

If such be the case, then if some one happens to be aggrieved by wholesome advice given by a well-wisher and commit suicide, the person offering the advice would be a 'murderer.' Similarly, jealous persons, withering under the pangs of jealousy, would place the blame of their suffering upon the wealthy person of whom they are jealous. Likewise, when a man with unhinged mind dies upon the death of his son or his loved person,—these latter would have to be regarded as 'murderers.' In the same manner some light-hearted people, on seeing a beautiful woman, become so affected that, becoming broken-hearted, they lose all consciousness; and in this case chaste women would have to be censured. And lastly (in the event of a Brāhmaṇa dying of grief caused by the death of a loved person) the dead person would incur the sin of having killed a **Brāhmaṇa.**

All this would be quite true, if there were no specific injunctions and prohibitions covering special cases. As a matter of fact however, the offering of wholesome advice is *enjoined*, while the robbing of what belongs to another is *forbidden*. It has been thus declared—' In the case of people engaged in doing good to others, if there happen something untoward, no blame attaches to those people; as for example, in the case of physicians administering medicine.' This does not mean that it is only in the case of medicines administered by physicians producing untoward results that there is no blame attaching to the physicians,—but in all similar cases; *e.g.*, when a cow has become stuck in the mire, if a man exerts himself to the utmost in pulling her out with his hand, and the cow happens to die, the man, who tried to pull her out, is not open to blame. Similarly in all analogous cases.

If a man happens to carry on his business carefully and acquires much prosperity in the shape of riches,—if some people happen to burn with jealousy, that man does not transgress any scriptural prohibition. Further, an act becomes an object of prohibition only when its causal efficiency (towards harm) is certain and unfailing; and no definite deduction can be drawn regarding the momentarily changing mental aberrations of living beings; so that it cannot be definitely ascertained that such and such a person has died on account of the beauty of such and such a woman. And so long as we can get at well-ascertained objects of prohibition, it cannot be right to make it pertain to doubtful cases.

" But in a case where the fact of the man becoming pale and withered in body, it is definitely ascertained that the cause of his suffering lies in the beauty of a certain woman,—this woman should either renounce her chastity and meet him, or else she should be regarded as a murderess."

Certainly not; even though the causal efficiency (of the woman's chastity towards her lover's sufferings) be duly ascertained, yet chastity cannot become an object of prohibition; because such a prohibition would be contrary to a definite Injunction; there is such an Injunction regarding the avoidance

of unchastity; and so long as an Injunction has room for application in an objection not touched by any other Injunction, it cannot encroach upon the objective of a contrary Injunction (so that so long as the prohibition of killing has room for application in the shape of ordinary murder, etc., it cannot encroach upon the objective of the Injunction of chastity.)

Some people argue as follows:—"What the injunction of chastity prohibits is that act which is done under the impulse of sexual passion, and not that which is done under a righteous impulse sanctioned by the scriptures. Hence, if the woman has intercourse with her dying lover, solely for saving his life, being moved entirely by the consideration that the poor man may lose his life,—she does not, by the act, transgress the injunction of chastity as regards the dictum that one injunction cannot encroach upon the objective of another; as the act in question does not form the objective of any other injunction, being due entirely to passion. It might be argued that there is no scriptural injunction sanctioning the act (of the woman meeting the dying lover), because there is no Smṛti text permitting adultery in such cases, as there is one sanctioning the begetting of a child from the dead husband's younger brother. It is true that if she did not act so, she would be encompassing the death of the man,—and it is on account of the prohibition of the act of killing that she acts in that manner. But that prohibition applies only to the *killing* that is done through the passion of hatred; while when the woman desists from meeting the man, it is not through hatred of him, but on account of the prohibition of adultery. The act too that one may do for benefiting another person, must be one that avoids the transgressing of all prohibitions."

In a case where some one asks a man for a certain thing, and threatens that he would kill himself if the thing is not given to him,—and does actually kill himself,—the man who refused the request cannot be regarded as a murderer. For if men were to be so regarded, there would be an end to all worldly business.—(104)

VERSE CV

THEY SHOULD OFFER SACRIFICES TO SARASVATI WITH HALF-BOILED RICE DEDICATED TO THE SPEECH-GODDESS,—DOING THE BEST EXPIATION FOR THE SIN OF UNTRUTHFULNESS.—(105)

Bhāṣya.

'*Speech-goddess*'—goddess in the form of speech; the rice boiled for her is said to be '*dedicated* to the speech-goddess';—Rice not over-boiled is called '*charu*';—with these they should offer sacrifices.

We have '*charubhiḥ*,' 'with half-boiled rice,' in the plural number, on account of the plural number in the verb '*yajēran*' '*they should sacrifice*'; and it does not mean that each man shall offer several kinds of rice. Nor is this offering to be made by several persons collectively, as is done in the case of the *Vrātyastoma* offering. The plural number in the present case is exactly analogous to the plural number in such passages as—'If it rains, many Brāhmaṇas should offer *sacrifices*'; and it is not like that in the case of the '*kapiñjala birds*' (where *at least three* are meant).

In the case in question the lie is told for the sake of helping the Brāhmaṇa or some such person; and this lying itself is a '*sin*';—the action of lying itself being a sin. The genitive ending in the phrase '*anṛtasyainaḥ*' 'sin of lying' denotes apposition; just as in the phrase '*Dharmakriyā*' (where '*dharma*' and '*kriyā*' are in apposition). Some people however hold that 'virtue' and 'vice' or 'merit' and 'sin' are *produced by actions* (and do not consist in the actions themselves); and according to this view in the phrase '*anṛtasya ēnaḥ*,' '*sin of lying*,' the terms 'sin' of 'lying' would not be in apposition; the 'sin' being the *effect* of the lying, and hence figuratively spoken of as being in apposition with it.

The '*niṣkṛti*' of this sin is 'purifying,' 'cleaning,'—*i.e.*, expiation.

'*Best*'—most excellent.

"Why should there be any sin in this case—when it has been declared that there is nothing wrong in lying under the circumstances mentioned."

Some people answer this objection by pointing out that the avoiding of untruth leads to excellent results (even when the telling of untruth may be permissible): a man may, on the basis of the scriptures, have taken the vow that throughout his life he would not tell a lie; and if such a man were to tell a lie for saving the life of a man, he would incur the sin of having been false to his vow; and it is in view of this sin that the present text prescribes the expiation. Even though such acts as the burning of a house and killing are prohibited, yet they have been sanctioned under special conditions. Similarly we have (in the preceding verse) the sanction for lying under special circumstances; hence the mention of its 'expiation' must be regarded as a mere reference (to the prohibition of lying in general).

Question.—"How can a sacrifice be offered to *Sarasvatī* with what has been *dedicated to the goddess of speech*?" If the rice has been 'dedicated' to the Speech-goddess, how can the sacrifice be regarded as offered to *Sarasvatī*? Or, if the two *Sarasvatīs* (one spoken of by the name '*Sarasvati*,' while the other is referred to by the name '*speech-goddess*') combined be regarded as the deity to whom the sacrifice is offered,—then there arises this difficulty that, as a matter of fact, the exact nature of the deity of a sacrifice can be learnt entirely from *words*, and the two names here used are two distinct words (so that both could not refer to the same deity); for instance, if the injunction of an offering is in the form—'the offering should be made *to Agni*,'—people do not use the other names of Agni,—such as '*Jvalana*' '*Kṛshānu*' and the like—when actually making the sacrifice. Similarly when the injunction is in the form 'one should offer to *Vāyu*,'—even though it is distinctly laid down that '*Vaya* is *Prāṇa*'—the

name '*Prāṇa*'—is not used when the offering is actually made."

All this is quite true; '*speech-goddess*' is the deity of the sacrifice,—the nominal affix in the term '*vāgdaivatya*' being denotative of the deific character; and the deity is not denoted by the term '*Sarasvatīm*,' which appears with the accusative ending. Because the Accusative ending denotes the *objective*, while the deity is the *recipient*, and not the *objective*.

"How then is the term '*Sarasvatīm*' to be construed?"

The present passage is only a hortatory exaggeration, just like the assertion 'one should make an offering to Agni, *Agni is all deities*;' and what the present statement means is that 'speech-goddess is Sarasvatī herself, and hence when the offering is made to the former she is pleased, and it reaches the other also.'

The character of the 'deity' is ascertained only through sacrifices; as in the case of sacrifices offered to Agni, to Prajāpati and so forth (where the fact of Agni or Prajāpati being the deity is ascertained only by the sacrifice being offered to them).

Some people explain that what is meant is that the deities are to be *worshipped*, the root '*yaji*' (in '*yajēran*') signifying the act of *worshipping*; and the deity worshipped forms the *objective* of the 'worship'; so that the use of the Accusative in '*Sarasvatīm*' is only right and proper. There are several such assertions as '*he worships the deity*' (where the deity is the object of the verb *to worship*)."

This however is not right. As under this view the *deific* character of *Sarasvatī* will have to be deduced from somewhere else; and such an interpretation would be contrary to the dictum that 'the deific character consists in being the *recipient* of a sacrificial offering.' This dictum however, being self-sufficient, is highly authoritative.

The real explanation is that the deity to whom a sacrifice is offered is to be made the recipient of the offering, and also to be meditated upon,—according to the injunction, 'One

shall think in his mind of the deity for whom the offering is held up'; so that the deity is also the object of the act of *meditating*; and the accusative ending (in '*Sarasvatīm*') actually denotes the *objective* itself.—(105)

VERSE CVI.

OR HE SHALL OFFER ACCORDING TO RULE, CLARIFIED BUTTER INTO THE FIRE, WITH THE 'KUṢMĀṆḌA'-TEXTS OR WITH THE VERSE 'UT, ETC.' SACRED TO VARUṆA, OR WITH THE THREE VERSES SACRED TO THE WATERS.—(106)

Bhāṣya.

The mantras called '*kūṣmāṇḍā*' are found in the *Yajurveda*; with these he shall offer clarified butter into the fire. The root '*hu*' (in '*juhuyāt*') signifies the act of *giving away to a certain deity*; and as the term '*agnau*' mentions *Agni* only as the receptacle into which the offering is to be poured, the deity of the offering should be deduced from the words of these Mantras themselves. In those cases where the words of the mantras are not found to be indicative of any deity,—*e.g.*, in the *mantra* '*dēvakṛtasyainasovayanamasi, etc.*' (Yājurveḍā, 8.13) *Prajāpati* is to be accepted as the required deity,—so say the people learned in sacrificial lore. The other alternative view is that the offering in such cases is to be associated with those that have already been found to be the 'deity' of other offerings. The author of the *Nirukta* also has declared—'what others could be the deity?' Though there is no deity common to all offerings in general, each sacrifice has its own materials as well as deity clearly indicated, sometimes directly, sometimes indirectly through *mantras*.

What we say however is that the *mantra* '*devakṛtasyainasovayajanamasi*,' itself contains the term '*yajana*'; and as '*yajana*' is the same as '*yājana*,' it is the latter that is the required deity; and as in the case of every *mantra*, there is bound to be something that is denoted by it, there will

always be some words of the *mantra* that would indicate the required deity.

The verse '*ut, etc.,*' refers to the verse '*Uduttamam varuṇa pāshamasmat, etc.*' (Ṛgveda, 1. 24. 15); and the epithet '*sacred to Varuṇa*' has been added in order to exclude the other verse beginning with '*ut*',—*viz.*, "*Ut-tvā madantu stomā,*' etc. (Ṛgveda, 8. 64. 1).

'*With the three verses sacred to the waters.*'—The term '*daivata*' is synonymous with '*dēvatā*'; and the three verses of which the Waters are the deity are '*Āpohiṣṭhā mayobhuvaḥ, etc.*' (Ṛgveda, 10. 9. 1). In this case there is one oblation with each of these three verses and one with all the three collectively.

The terms '*clarified butter*' and '*into the fire*' have to be construed with every clause.

'*According to rule,*'—*i.e.*, in accordance with the practice of cultured people. Hence, in as much as the offering, being that of butter, all the details of the primary sacrifices could not be transferred to it,—this phrase sanctions the adopting of only such details as the brushing of the place, sprinkling it with water, examining of the butter, pouring the oblations with the *sruva* and so forth.

The particle '*vā*' shows that all the offerings mentioned are to be regarded as optional alternatives.—(106)

Section XVI. Abstaining from giving evidence

VERSE CVII

THE MAN, WHO, WITHOUT BEING ILL, DOES NOT GIVE EVIDENCE FOR THREE FORTNIGHTS, IN REGARD TO DEBTS AND OTHER MATTERS, SHOULD BEAR THAT ENTIRE DEBT, AS ALSO A PENALTY OF THE TENTH PART IN ALL CASES.—(107)

Bhāṣya.

Fifteen days and nights make a '*fortnight*'; the aggregate of three fortnights is called '*tripakṣam*'; according to Pāṇini 2. 4. 17, the compound should have a feminine ending, but this is precluded by the exception that follows, regarding '*pātra*' and other words (which include the word '*pakṣa*' also).

"In that case the feminine form '*tripakṣī*' should be impossible."

The wrong gender in that case is to be regarded as a 'Vedic anomaly.'

The Ablative ending in '*tripakṣāt*' has the force of the participial affix '*lyap*.'

The meaning of the verse thus is that—'He who after *having waited* for three fortnights, dees not give evidence, without being ill, should bear the burden of that debt';—'as also the tenth part out of it, as a penalty.'

'*Debts and other matters*';—the addition of the phrase 'and other matters' indicates that what is said here applies to all kinds of suits; and the repetition of the term 'debt' is only by way of illustration. The meaning is that—'in a suit where for the said time no evidence is given, the burden of the defeated party is to be borne by the witnesses.'

'*Gada*,' '*illness*,' is meant to indicate other kinds of disability also; so that due cognizance should be taken of

such conditions also as family troubles, fear of creditor and so forth.

The term '*bandha*' following a numeral word, denotes *penalty*, and stands for the 'tenth part.'

The terms '*naraḥ*' and '*sarvataḥ*' are added only for filling up the metre.

Others explain that the assertion '*should bear that debt*' means that 'he incurs the sin of stealing the amount of the debt.'

The meaning is that the man shall pay the tenth part of the fine that would be payable to the king by the defeated party.—(107)

XVII.—After-effects of Giving Evidence

VERSE CVIII

THAT WITNESS,—WHO MAY BE FOUND, WITHIN A WEEK OF HAVING GIVEN EVIDENCE, TO SUFFER FROM SICKNESS, FIRE OR THE DEATH OF A RELATIVE,—SHOULD BE MADE TO PAY THE DEBT AND ALSO THE PENALTY.—(108)

Bhāṣya.

'*Saptāhāt,*' '*within a week,*'—the use of the Ablative implies that the proposition 'before' is understood. That is, on any-one of the seven days, after he has given evidence, if the witness is found to suffer from sickness, it implies that he has been adjudged by destiny to be a perjuror, and hence he should be punished in accordance with the aforesaid rule.

'*Illness*' stands for any kind of acute suffering;—'*fire*' for the burning of cattle and conveyances;—and '*death of a relative*' for the death of the son or the wife or some other near relative;—all these being indicative of his having given false evidence.—(108)

XVIII.—Oaths and Ordeals

VERSE CIX

In witness-less cases, if he cannot get at the truth between the two disputants by any means, he should discover it by means of oath.—(109)

Bhāṣya.

'*Witnessless cases*,'—those cases in which there are no witnesses;—in regard to these, when the king fails to find out the truth,—*by any means*,—*i e.*, by any ordinary methods,—'*he shall discover*'—learn—it '*by means of oath*'—*i.e.*, by transcendental methods of inference. The root '**labh**' 'to get at' (in '*lambhayet*'), though literally meaning the *attaining* of a thing, indirectly implies *knowing*.

All that the advice conveyed by the injunction means is that 'in cases where there are no witnesses, he shall discover the truth by means of oath'; all the rest merely fills up the metre.

'*Mithaḥ*'—between themselves.—(109)

VERSE CX

By the great sages, as well as by the Gods, oaths have been taken for the purposes of a case; Vashiṣṭha even swore an oath before the King Paijavana.—(110)

Bhāṣya.

This is a commendatory supplement to the foregoing injunction of having recourse to oaths.

'By the great sages'—*i.e.*, by the seven sages, called *'Saptarṣi,'* and the rest;—*'oaths have been taken, for the purposes of a case,'*—*i.e.*, for the purpose of arriving at a decision regarding doubtful cases.

In this connection the story recounted by the revered Kṛṣṇadvaipāyana may be cited as an example. On one occasion when their lotuses had been stolen, the seven sages swore among themselves—'he who has stolen your lotus shall go the way of sinners,' and so forth.

'By the Gods'—Indra and the rest, also; *e.g.*, when Indra was accused in relation to Ahalyā, he swore many oaths, being afraid of being cursed.

'Vashiṣṭha' has been mentioned separately, for the purpose of indicating his special importance;—he also swore; the term 'oath' itself conveying the sense of *swearing*, the verb '*swore*' should be taken in the sense of 'took'; just as we have such expressions as 'sacrifices a sacrifice,' 'nourished with self-nourishment,'—so have we also the expression '*swore an oath.*' '*Shēpē*' is the third person singular form in the Past Perfect tense of the root '*shap*' to *swear*.

Before the King Paijavana;—Sudās, the son of Pijavana was a king; and, during his reign, on being accused by Vishvāmitra in the midst of an assembly, Vashiṣṭha was beset with anger and desire and took the oath with regard to his

VERSE CXI

THE WISE MAN SHALL NOT TAKE AN OATH IMPROPERLY; TAKING AN IMPROPER OATH, ONE BECOMES RUINED HERE AS WELL AS AFTER DEATH.—(111)

Bhāṣya.

This verse describes the effect of improper swearing, '*improper*' meaning *contrary to truth, false.*

The gravity of the sin of 'false swearing' is dependent upon the nature of the property stolen—be it goods or something else,—and also upon that of the caste of the person involved and so forth. But even in minor matters one should not swear falsely; in more serious matters of course, the sin is more heinous.

'*Ruin after death*' consists in falling into hell; and '*ruin here*' is in the form of public obloquy, and also punishment at the hands of the king, in the event of the true facts being discovered by other means.—(111)

the women, and on being asked by her to give a certain thing, he swears falsely that he would give it to her,—then this is certainly wrong.

'*Shapathē*,' '*in swearing*';—the Locative here signifies the *subject*, and not the *purpose*. Hence the meaning is that there is nothing wrong, only in that form of oath which is sworn in connection only with that single woman with whom the man is in love. If, however, the Locative signified the *purpose*, then there would be nothing wrong in swearing for the purpose of robbing others of their property; and in that case what is declared (in 121 below) regarding the heavier punishment, in the case of perjury through lust, being 'ten times' would not be proper.

Even in the case of the woman, if the man swears falsely in a dispute with her, relating to other matters,—he commits a sin. Similarly in other cases.

'*In connection with marriages*';—when one says 'this man has married another woman,' or 'that woman should be married by you,' and so forth; such lying, also in connection with the marriage of friends and others, is not sinful, but not so the concealing of the real caste of the bride and such details.

'*Fodder for cows*';—when, for the sake of obtaining fodder for cows, one has been constrained to commit theft, but denies it,—then if called to bear testimony, if the witness should swear to his not having done the act,—there is nothing wrong in this.

Similarly with '*fuel*.'

'*For the sake of Brāhmaṇas*,'—for conferring some benefit on Brahmaṇas.

"Lying for the sake of all castes having been already permitted (in 104), why should this be repeated here?"

Some people offer the following explanation:—In the case of Brāhmaṇas *false swearing* is permitted, while in that of the Shūdra and other castes, it is simple *lying that is sanctioned*.

This however is not right; as under 104, it has been declared that 'such lying is preferable to truth'; so that what

is sanctioned there is not *lying* at all. The fact of the matter is that the said verse is not a prohibition; it provides an exception to the prohibition of false swearing contained in the preceding verse; and hence there should be nothing wrong in swearing for the sake of any caste.

"Why then should the declaration in the present verse be made?"

What has been permitted under 104 is lying with a view to save the men from *death*, which refers to all castes; for the purpose of *conferring a benefit*, however, it is permitted only in the case of the *Brāhmaṇa*; as in the case of the other castes, the man might be prompted to lie also by greed for money and other motives.

In all these cases also the permission of false oath applies to only those cases where the purpose cannot be served without it, by any other means—(112)

VERSE CXIII

THE BRĀHMAṆA SHOULD BE MADE TO SWEAR BY TRUTH, THE KṢATTRIYA BY CONVEYANCES AND WEAPONS, THE VAISHYA BY CATTLE, GRAINS AND GOLD, AND THE SHUDRA BY ALL SINS.—(113)

Bhāṣya.

In as much as the act of 'swearing' consists in invoking upon oneself evil consequences,—such as 'If I do this may such and such an evil befall me,'—when a man is made to say 'I swear by truth,' what is meant is—'may all my merit due to truthfulness become futile.'

'*Conveyances*' and '*weapons*' also are the means of swearing in this same sense; when one swears by these it means—'may these be useless for me.'

'*Cattle, grains and gold,*'—the Vaishya should be made to swear by touching these; which would mean 'may these be useless for me.'

'*The Shūdra by all sins*';—the *Shūdra* should be made to say—'may the following sins befall me.'—(113)

VERSE CXIV

OR, HE MAY MAKE HIM FETCH FIRE, OR MAKE HIM DIVE UNDER WATER, OR MAKE HIM TOUCH THE HEADS OF HIS SON AND WIFE SEVERALLY.—(114)

Bhāṣya.

'*He shall make him fetch water*'—with the hand, with only the leaf of the fig tree intervening. As for the other details, regarding the man going seven steps and so forth,—all this may be found in other *Smṛtis* (*e.g.*, Yājñavalkya, *Vyavahāra*, 103, and Nārada 2. 296). The matter being well known by tradition, our author has simply stated the 'fetching of fire.'

'*He*,' *i.e.*, the Judge—'shall make him dive under water.'

'*He shall make him touch the heads of his son and wife, severally*,'—the man shall touch the head with his hand; and as this occurs in the context dealing with 'oaths,' the man should be made to utter the swearing words also.

'*Severally*'—separately, one by one.—(114)

VERSE CXV

HE WHOM THE BLAZING FIRE BURNS NOT, OR WHOM THE WATER DOES NOT THROW UP, OR WHO DOES NOT SPEEDILY SUFFER SOME MISFORTUNE, SHOULD BE REGARDED AS PURE ON HIS OATH.—(115)

Bhāṣya.

'*Blazing*'—flaming.

A red-hot iron-ball, when held by an innocent person, does not burn him; the water does not make him float on

the surface, if he has sworn truly; he also does not suffer '*misfortune*,'—*i.e.* trouble, in regard to his hair and other parts of his body. 'Illness' has already been mentioned before.

Such a person is to '*be regarded as pure*'—*i.e.*, innocent.

'*Speedily*'—*i.e.*, within a period of fourteen days,—as declared in another *Smṛti*.—(115)

VERSE CXVI

FORMERLY WHEN VATSA WAS ACCUSED BY HIS YOUNGER BROTHER, FIRE, THE WORLD'S SPY, DID NOT BURN EVEN A HAIR OF HIS, BECAUSE OF TRUTH.—(116)

Bhāṣya.

Question.—"How can it be that fire shall not burn or that water shall not throw up? Certainly elemental substances never renounce their natural functions, being as they are unconscious entities."

It is in anticipation of this objection that the author corroborates his statement by means of a commendatory story. Though the matter in question is one that can be ascertained either by positive and negative induction, or by direct perception,—yet there may be people who would regard such phenomena in the same light as a magical performance, and so would be inclined to take all that is said regarding oaths and ordeals merely as intended to frighten the person into telling the truth; just in the same way as verbal threats and angry staring, etc., are used to make men tell the truth;—and it is in view of this contingency that the author has cited an instance from the Veda; as there are men who become convinced of the truth of a statement when it is corroborated by past occurrences.

Vatsa was a sage of the family of Kaṇva; he was '*accused*'—blamed—by his younger step-brother, of being not a Brāhmaṇa, but a *Shūdra*, whereupon he said—'By truth,

I enter fire, if I be not a Brāhmaṇa' ; when having said this, he entered the fire, '*the fire did not burn even his hair*' ;—and why ?—'*because of truth.*'

The question arising as to how fire can know the truth ?—the answer is—'*fire is the world's spy.*' The man who, keeping his real character concealed, comes to know what is done and what is not done by others, is called 'spy,' known also by such names as '*chāra*' '*praṇidhi*' and so forth. The God Agni moves within all living beings, and as such, is cognisant of all that is done or not done. We read in the *Tāṇḍya Brāhmaṇa* that " Agni is one who lies within the gods as well as the Asuras;—Gautama, approaching fire, said 'May you Sir, operate within all beings' ; and then he goes on to say—' May you Sir, move about here *as a spy.*' " A similar passage from the *Pañchavimsha-Brāhmaṇa* may be quoted;—" Vatsa and Medhātithi were two sons of Kashyapa ; Medhātithi insulted Vatsa by saying—' thou art not a Brāhmaṇa' ; and the only remedy of this was Fire."

Objection.—" As a matter of fact however, it is found that real thieves are not burnt by fire (when undergoing the ordeal) while innocent persons are actually burnt. How then can any reliance be placed upon oaths and ordeals ? "

Our answer is as follows :—The principle here laid down cannot be rejected simply on the strength of a perceptible miscarriage; because such miscarriages are very rare. In fact, even in the case of perception and other forms of valid cognition, such miscarriages are met with ; and yet these are not regarded as untrustworthy. Further, it has been declared that 'what is found to be wrong does not deserve the name of Perception, etc. ; what is found to be wrong is not Perception ; and what is Perception is never wrong'; and on the analogy of this statement, it may be asserted that 'what miscarries is not an *ordeal*, and what *is* an *ordeal* never miscarries.' For what is an 'ordeal' ? It is that wherein the full procedure is observed, all obstructions in the shape of spells neutralising the force of the fire and so forth duly examined and removed ; what is contary to this is *not* an ordeal.

And certainly an ordeal of the said kind never miscarries. Even though there be some such miscarriage, it must be regarded as the result of some past act of the man; in fact even a real criminal comes to be acquitted by virtue of some previous meritorious act; while an innocent man becomes convicted by virtue of an evil deed committed in his past life. The causes leading up to the fruition of past acts are truly strange. But with all this, it is only in one case among a thousand that an ordeal is found to fail; as a rule it is infallible; and it is exactly the same with the *Putrēṣṭi*, the *Kārīrī* and such other Vedic sacrifices.

From all this it follows that reliance should be placed upon oaths and ordeals also, just as on witnesses; for these latter also speak falsely sometimes.

Thus then, what has been said regarding ordeals is not meant simply to frighten the man. In fact, in the case of the said ordeals, it is the truth that prevails.—(116)

XIX.—Effect of False Evidence upon the Suit

VERSE CXVII

IN WHATEVER SUIT FALSE EVIDENCE SHOULD HAVE BEEN GIVEN, THE EFFECT OF THAT SHALL CEASE, AND WHAT HAS BEEN DONE SHALL BE UNDONE.—(117)

Bhāṣya.

In a suit where a decision should have been taken on the strength of lying witnesses,—that decision shall be reversed.

'*What is done shall be undone*'; *i.e.*, even though the creditor may have received the amount of debt claimed, he should be made to refund it ; and the debtor shall be excused the fine that may have been imposed upon him. In a case where the victory was merely verbal, the verdict being simply 'you are defeated,'—the same shall be declared to be reversed.

The decision, carried into effect, even to the realisation of the fine,—is what is said to be '*done*'; and this '*shall cease,*' '*become undone*'; the repetition of the same idea serving the purpose of filling up the metre.—(117)

VERSE CXVIII

EVIDENCE IS CALLED 'FALSE,' WHEN IT IS DUE TO GREED, OR EMBARRASSMENT, OR FRIGHT, OR FRIENDSHIP, OR LUST, OR ANGER, OR IGNORANCE, OR CHILDISHNESS.—(118)

Bhāṣya.

False evidence is due to greed and the rest. These have been enumerated for the purpose of determining the exact penalty.

'*False*'— untrue.

The Ablative throughout denotes *cause.*—(118)

XX.—Penalty for Perjury

VERSE CXIX

I AM GOING TO EXPLAIN, IN DUE ORDER, THE PARTICULAR PUNISHMENTS FOR HIM WHO SHOULD GIVE FALSE EVIDENCE FROM ANY ONE OF THESE CAUSES.—(119)

Bhāṣya.

The construction to be adopted in the following verse should be—'He who tells a lie through greed should be fined one thousand' and so forth.—(119)

VERSE CXX

IF THROUGH GREED, HE SHOULD BE FINED A THOUSAND; IF THROUGH EMBARRASSMENT, THE LOWEST AMERCEMENT; IF THROUGH FEAR, TWO MIDDLLING ONES; IF THROUGH FRIENDSHIP, FOUR TIMES THE FIRST.—(120)

Bhāṣya.

When the man deposes falsely after receiving a bribe from another person, his motive is *greed.*

'*Through embarrassment.*'—Though the man may be quite truthful, habituated to speak in strict accordance with what he has actually seen, yet on account of some distraction of the mind, at the time of his examination, he may be so confused as to be unable either to comprehend the question or to recall the exact facts of the case, and thereby he may make statements that are not true; in this case the reason is '*embarrassment.*'

'*Fright*' is *fear*, in the form of the suspicion—'if this man was to lose the case through my telling the truth, he would ruin me by injuring my relations, or by making me suffer financially.'

'*One thousand*; '—what is that to which this number appertains is to be learnt from other passages : they are '*paṇas*.'

'*Lowest amercement*,'—*i.e.* 250 *paṇas*, as described under 138 below.

'*Two middling ones*,'—*i.e.*, amercements ; the number being changed into the dual.

'*Four times the first*,'—*i.e.* 1,000 *paṇas*.

It is through metrical considerations that the same idea is expressed in various ways.—(120)

VERSE CXXI

IF THROUGH LUST, TEN TIMES THE FIRST ; IF THROUGH ANGER, THREE TIMES THE NEXT ; IF THROUGH IGNORANCE, FULL TWO HUNDRED ; AND IF THROUGH CHILDISHNESS, ONLY A HUNDRED.—(121)

Bhāṣya.

'*Lust*,'—sexual love : when females happen to be parties to the suit, the person who loves one of them, deposes falsely ; and such a person should be fined 2,500 *Paṇas*.

'*If through anger, three times the next*; '—the 'lowest amercement' having been mentioned before, its 'next' is the 'middling amercement.' Or, on the basis of ordinary usage, '*para*' may stand for the 'highest.'

'*Through ignorance*';—he who, through mistake, should say what is contrary to facts, on the spur of the moment,—and not during his regular examination,—his punishment shall consist of '*two hundred*.' This is meant to be merely suggestive of some sort of punishment to be inflicted; and hence it is not contrary (to what has been declared regarding the *lowest fine* to consist of 250).

'*Childishness*,'—is *childish character*. The man who has not acquired steadiness of mind is called 'childish.' The punishment here laid down is for one who has just passed his minority ; one who is still a minor cannot be a witness at all.—(121)

VERSE CXXII

THEY DECLARE THESE PENALTIES FOR FALSE EVIDENCE TO HAVE BEEN PRESCRIBED BY THE WISE, FOR THE PURPOSE THAT JUSTICE MAY NOT FAIL AND INJUSTICE MAY BE PREVENTED.—(122)

Bhāṣya.

With a view to indicating that it is necessary to inflict the punishments, the author shows that punishment serves two purposes.

Decision taken in strict accordance with Law and Usage is '*Justice*'; and its 'non-failing' consists in its *not being thwarted*;—and for this purpose the witnesses have to be punished. Though the real purpose of all this is the finding out of what has been done and what not done; and it is this that is reiterated here (in different words).—(122)

VERSE CXXIII

THE KING SHALL HOWEVER FINE AND THEN BANISH THE THREE CASTES GIVING FALSE EVIDENCE; BUT THE BRĀHMAṆA HE SHALL DEPRIVE OF HIS CLOTHES (AND DWELLING).—(123)

Bhāṣya.

The penalties prescribed above are for the first offenders; for repeated offenders there is fining, followed by 'banishment,'—*i. e.*, expulsion from the kingdom;—or death; rules regarding the inflicting of such penalty being met with in political science.

'*But the Brāhmaṇa he shall deprive of his clothes*';—'*vivāsana*' meaning *depriving of clothes, or of dwelling.* The verb is formed from the noun '*vivāsa,*' 'homeless,' 'clothesless,' with the causal affix '*ṇich,*' which makes the nominal verb 'makes *vivāsa.*'

'*The three Castes*'—the *Kṣattriya* and the rest;—since for the Brāhmaṇa a separate punishment is prescribed.—(123)

XXI.—Corporal Punishment

VERSE CXXIV

MANU SVĀYAMBHUVA HAS NAMED TEN PLACES FOR PUNISHMENT, WHERE IT SHOULD BE INFLICTED IN THE CASE OF THE THREE CASTES; BUT THE BRĀHMAṆA SHALL DEPART UNSCATHED.—(124)

Bhāṣya.

The term '*sthāna*' '*place*,' is synonymous with 'subject'; the meaning being that the man should be made to suffer pain on these spots.

In as much as for the Brāhmaṇa also pecuniary punishment has been directly prescribed, it follows that what is said here in regard to his departing 'unscathed' is with reference to corporal punishment, which is forbidden in his case; even though 'property' also is included (in the next verse) among the 'ten places.'

Our opinion however is that, in as much as one can be called '*unscathed*' only when he has all his property also intact, *pecuniary* punishment also must be taken as forbidden in the case of the Brāhmaṇa; hence if a Brāhmaṇa, endowed with learning, character and noble birth, should, by chance, happen to commit a crime, there is no pecuniary punishment either. In fact, it is in reference to such a Brāhmaṇa that Gautama, having begun with the statement—'In this world there are two men firm in their vow,' (8.1)—goes on to say,—'He should be excused from six.' (8.13).—(124)

VERSE CXXV

(1) THE GENITAL ORGAN, (2) THE STOMACH, (3) THE TONGUE, (4) THE HANDS, (5) THE FEET, (6) THE EYE, (7) THE NOSE, (8) THE EARS, (9) THE PROPERTY AND (10) THE BODY.—(125)

Bhāṣya.

'*The genital organ*'—male and female. Here the places are only named; the exact form in which the punishment is to be inflicted on each 'place' shall be described later on. If, with reference to any 'place,' no particular form of punishment has been prescribed, the law is that the culprit shall suffer by that limb whereby he may have committed the wrong. Hence in cases of incest, punishment is inflicted on the genital organ;—in theft it is inflicted upon the stomach, in the form of starvation, etc.;—in the case of defamation, on the tongue, and in that of assault, on the hands;—when he trespasses with his feet, it is to be inflicted on the feet;—if he openly and fearlessly stares at the king's wife, his punishment is inflicted on the eyes,—by smelling the (forbidden) odour of sandal-paint, he is punished on the nose;—if he should be found listening behind the wall or the curtain, while the king is holding secret council, the punishment should fall on his ears;—punishment regarding '*property*' is well known;—the killing of the '*body*' is done only in the case of the gravest offenders.—(125)

XXII. Considerations regarding Punishments

VERSE CXXVI

HAVING DULY ASCERTAINED THE MOTIVE AND THE TIME AND PLACE, AND HAVING TAKEN INTO CONSIDERATION THE CONDITION (OF THE ACCUSED) AND THE NATURE OF THE OFFENCE,—HE SHALL INFLICT PUNISHMENT UPON THOSE DESERVING PUNISHMENT.—(126)

Bhāṣya.

of *that which leads to repeated action*; the meaning thus is that the king shall ascertain what it was that led the man to commit the offence, *i.e.*, he shall find out if he was urged to it by the starving condition of his family, or by association with criminals, or by reason of his being addicted to drink and gambling,—and if he did it intentionally or by mistake,—if he was urged to it by another person, or he did it voluntarily. These are the points to be considered in the ascertaining of the man's '*motive*.'

'*Place*,'—a village, forest, granary or pasture-ground.

'*Time*'—whether it was night or day; whether it was a time of scarcity or of plenty; whether the criminal is a youth or a full-grown person.

'*Condition*,'—capability or otherwise to suffer the penalty,—whether he is rich or poor.

'*Offence*'—under which of the eighteen categories the act falls.

Having, in due order, considered all this, the king shall '*inflict the punishment,*'—so that the condition of the society may not suffer.—(126)

VERSE CXXVII

UNJUST PUNISHMENT IS DESTRUCTIVE OF REPUTATION AMONG MEN AND SUBVERSIVE OF FAME; IN THE OTHER WORLD ALSO IT LEADS TO LOSS OF HEAVEN; HE SHALL THEREFORE AVOID IT.—(127)

Bhāṣya.

'*Unfair punishment*' is that punishment, that savours strongly of injustice;—*i.e.*, one that takes no account of what

---

qualities being known in his own country, while 'fame' in their being known in foreign countries. Or 'reputation' may consist in one's good name during life.—Or the passage being a purely commendatory one, some other distinction may be drawn.

'*Leads to loss of heaven*';—*i.e.*, obstructs the passage to heaven, that might have been opened by other meritorious deeds.

'*In the other world*';—this has been added for filling up the metre; 'heaven' itself being the other world.

VERSE CXXVIII

THE KING, PUNISHING THOSE WHO DO NOT DESERVE TO BE PUNISHED, AND NOT PUNISHING THOSE WHO DESERVE TO BE PUNISHED, ATTAINS GREAT ILL-FAME AND GOES TO HELL.—(128)

Bhāṣya.

The preceding verse was supplementary to the injunction regarding the consideration of the 'motive' and other things; while the present verse *prohibits* the punishing of persons who are not guilty of any offence, and enjoins that of those who are guilty;—and this is emphasised because of the possi-

OF REPRIMAND, THEN IN THE FORM OF REPROACH, THIRDLY IN THE FORM OF FINE, AND AFTER THAT THE DEATH-PENALTY.—(129)

Bhāṣya.

If the guilty person is a good man and has committed a slight offence, and for the first time, then he is only reprimanded: 'you have not acted well, do not do it again.'

If, on being thus reprimanded, the man does not desist, or goes on to say 'what is there wrong in this?'—then he is rebuked with such harsh reproachful words as 'fie,' 'shame' and so forth.

If he does not desist even when thus rebuked, he should be punished with fine, in accordance with the Law.

If he does not mind the fine either through folly or pride of wealth,—then he should be killed. This '*death-penalty*'

consists in the cutting off of certain limbs, etc., and not necessarily in actually killing the man; as is clear from what follows in the next verse.—(129)

VERSE CXXX

WHEN HOWEVER HE IS NOT ABLE TO RESTRAIN THEM EVEN BY THE 'DEATH-PENALTY,'—THEN HE SHOULD INFLICT ON THEM ALL THESE FOUR.—(130)

Bhāṣya.

If actual killing were meant by 'death-penalty,' then what would be there that could not be done by it? How too would the penalty not restrain a crime?

On persons not resuming good behaviour after being rebuked, '—fine' and the 'death-penalty,' *i. e.*, corporal punishment, should be conjointly inflicted. If, even after corporal punishment, the man does not desist, the king shall not ignore him,—under the impression that he has already inflicted the legal punishment,—but he shall inflict actual 'death-penalty.'

The present verse has been added with a view to indicate that the matter of *fines* and *death-penalty* is going to be taken up again later on.

As regards verbal punishment, it being too gentle, who would mind it? If the man has been punished with a fine, and even then does not desist, the 'death-penalty' shall be inflicted in the form of *the cutting off of the fingers* and so forth, as described below under 9.277.—(130)

XXIII.—Measures

VERSE CXXXI

I AM GOING TO DESCRIBE FULLY, FOR THE SAKE OF BUSINESS-TRANSACTIONS, THOSE TECHNICAL TERMS THAT ARE USED IN THE WORLD IN CONNECTION WITH SILVER AND GOLD.—(131)

Bhāṣya.

Objection.—"Such terms as '*likṣā*' (Louse-egg) and the rest, pertaining to copper and other metals are already well known in the world; what is the use of propounding a [illegible] definition? They could be learnt from the usage [illegible] men, just as the [illegible] the like is [illegible]."

[illegible] objection that the author has added [illegible] sake of business-transactions' [illegible] sphere; [illegible] the meaning is that what is adopted as the basis here is usage in actual business (and not ordinary usage).

"In that case, standing on the same footing as such words as 'cow' and the like, they would be learnt from actual business-usage; what is the use of setting forth a scriptural injunction?"

The answer to this is that the Injunction is put forth for the purposes of restriction. There being several other such terms in use in connection with iron, bell-metal, gold and other metals, it is with a view to preclude these that the author has laid down the present injunction; as also for precluding the difference in the measures, which is met with in certain localities. For instance, in some localities, a *pala* is regarded as made of 40 *māṣas*, while in others of 64, and in others again of 108, and so forth. And all this diversity is precluded and one definite measure is laid down here.

The verse is to be construed as follows—'*these terms that are used in the world, I am going to describe for the sake of business-transactions*,'—so that the business-transactions of all men may be carried on with the help of those same technical terms; and incidentally the rules relating to these also would become clearer.—(131)

VERSE CXXXII

THE SMALL MOTE THAT IS SEEN WHEN THE SUN SHINES THROUGH A LATTICE-HOLE THEY DECLARE TO BE THE 'TRIAD,' THE VERY FIRST OF MEASURES.—(132)

Bhāṣya.

Some people do not read this verse as part of the text, on the ground that there is no difference of opinion regarding the 'Triad.'

When the sun shines through a window-hole or lattice, we see a particle of dust; it is this that is called 'Triad.'

'*Antara*' means *hole*.

'*This is the very first of measures*.'—(132)

VERSE CXXXIII

EIGHT TRIADS SHOULD BE KNOWN AS ONE 'LOUSE-EGG' IN MEASURE; THREE OF THESE AS ONE 'BLACK MUSTARD'; AND THREE OF THESE LATTER AS A 'WHITE MUSTARD.'—(133)

Bhāṣya.

The gradually ascending measures are now described.

The term '*likṣā*,' '*louse*,' does not stand for the sweatborn insect, when it is said that 'three Louse-eggs make one Black Mustard'; what is meant is that the three of the measures known as the 'Louse-egg' make one of that particular measure which is known as 'Black Mustard.' This meets those objectors who argue that the 'barley-grain,' etc., that we see

are not found to be exactly of the same size as those described here. Because the measure here described is not of the barley and other *grains*; what is meant is that these terms constitute the names of those particular measures. The subject has been introduced also with the words—'I am going to describe the *measures*.'

The '*Triad*' is an object whose measure is fixed; and through this Triad all the other measures are to be determined. Clever men are capable of forming compounds of 'Triads'; so that the text has not put forward anything impossible or unknown. What is here described becomes clear by referring to the opinions and ideas current among goldsmiths. In fact the details of the subject can be ascertained only by referring to them.—(133)

VERSE CXXXIV

SIX 'MUSTARDS' MAKE ONE MIDDLING 'BARLEY-CORN'; THREE OF THESE MAKE ONE 'GUÑJĀ-BERRY'; A 'BEAN' IS MADE OF FIVE 'GUÑJA-BERRIES;' AND SIXTEEN 'BEANS' MAKE ONE 'GOLD-PIECE.'—(134)

Bhāṣya.

"The erm '*middling*' is likely to lead to mistakes. If the names here put forward are meant to be denotative of the size of the objects named, then the addition of the epithet 'middling' has some meaning,—the sense being that the size of the 'Mustard' here meant is that of a mustard grain which is neither too large nor too small. If, on the other hand, the terms are put forward as mere technical names, then there can be no sense in the term '*middling*,'—the term 'barley-corn' being a mere technical name (standing for the *grain*)."

This is not right. This is not a prose-treatise, that we should seek for the justification of every expression used; it is a metrical treatise, and as suc hsometimes even irrelevant

expressions are introduced for the purpose of filling up the mètre. As a matter of fact, however, there is some relevancy in the present case; if it were something wholly irrelevant it would interfere with the comprehension of the sentence as a whole, and would thereby vitiate its authority. But there is nothing irrelevant here; the fact is that the 'barley-corn' being mentioned in the *middle* of the entire table of measures—beginning with the 'Triad' and ending with the '*Shatamāna*,'—the epithet '*middling*' has been added to it in the sense that the particular measure known as the 'barley-corn' occurs in the *middle* of the whole table of measures.

The term '*pañchakṛṣṇalika*' is formed with the '*ṭhin*' affix, the sense being 'that which is made up of five '*Kṛṣṇalas*.' If the reading is '*pañchakṛṣṇalika*,' it should be treated as a *Bahuvrīhi* compound, ending with the '*kap*' affix.

Sixteen of these '*guñjā-berries*' make one 'gold-piece.'—(134)

VERSE CXXXV

FOUR 'GOLD-PIECES' MAKE ONE 'PALA,' TEN PALAS ONE 'DHARAṆA'; AND TWO 'GUÑJA-BERRIES' OF EQUAL WEIGHT SHOULD BE KNOWN AS ONE 'SILVER-BEAN.'—(135)

Bhāṣya.

'*Pala*' is the name, and '*gold-piece*' the thing named, '*four*' is its qualifying adjunct.

'*Two kṛṣṇalas*' is the thing named, and the compound term '*Silver-Bean*' the name.

"What the text declares is that when we come to ascertain the exact measure of the '*Bean*' in connection with silver, we have to understand it as being equal to '*two guñja-berries*.' Now this makes the measure indefinite."

It is in view of this that the text has added the epithet '*of equal weight*'; *i.e.*, the two are to be held on each pan of the weighing-scale, without any other kinds of measure. The

sense of this epithet has to be explained on the same lines as that of the epithet '*middling*' (in verse 134); and its use lies in the fact that if unequal beans were meant, the weight would remain indefinite.—(135)

VERSE CXXXVI

SIXTEEN OF THESE LATTER MAKE ONE 'SILVER-DHARAṆA' OR 'PURĀṆA'; AND A 'KARṢA' OF COPPER IS TO BE KNOWN AS 'KĀRṢĀPAṆA' OR 'PAṆA.'—(136)

Bhāṣya.

Sixteen '*Silver-Beans*' make a '*Silver-Dharaṇa*'; of which the other name is '*Purāṇa.*'

'*Kārṣāpaṇa*' and '*Paṇa*' are the two names of the 'Copper-karṣa'; the term '*Karṣa*' is used here in the sense in which it is used among the people, and it is not used in any technical sense, in the way in which '*Kṛṣṇala*' and other terms have been used.—(136)

VERSE CXXXVII

TEN 'DHARAṆAS' ARE TO BE KNOWN AS THE 'SILVER SHATAMĀNA' (CENTIMETRE); AND THE 'NIṢKA' SHOULD BE UNDERSTOOD AS FOUR 'GOLD-PIECES' IN WEIGHT.—(137)

Bhāṣya.

'*Shatamāna,*' '*Centimetre,*' is the name for ten '*Dharaṇas*'; here the term '*Silver*' includes *Gold* also. Hence the name '*Shatamāna*' here put forth is applicable to both gold and silver; but its exact measure when applied to gold is to be ascertained from other treatises; since it is here distinctly specified as the '*Silver-Shatamāna.*'—(137)

XXIV. Grades of Fine

VERSE CXXXVIII

THE FIRST AMERCEMENT HAS BEEN DECLARED TO BE TWO HUNDRED AND FIFTY PAṆAS; THE MIDDLING IS TO BE KNOWN AS FIVE HUNDRED; AND THE HIGHEST AS A THOUSAND.—(138)

Bhāṣya.

The term '*amercement*' is to be construed also with the terms '*middling*' and '*highest*'; though in other treatises these two terms are found to be used by themselves also:—*e.g.*, the punishment with these is the '*Highest.*' From the point of view of the scriptures, and also from the juxtaposition of the words, they are to be regarded as qualifying '*amercement.*'

The words of the text are quite clear.—(138)

VERSE CXXXIX

ON THE DEBT BEING ADMITTED TO BE DUE, THE DEBTOR DESERVES (A FINE OF) FIVE PER CENT.; AND IN THE CASE OF DENIAL, TWICE AS MUCH; SUCH IS THE ORDINANCE OF MANU.—(139)

Bhāṣya.

When the debtor, on being summoned to the King's Court, admits the debt as legally due by him, saying—'I do really owe this to him,'—then '*i.e., deserves five per cent.*' '*as fine*';—this has to be added. By this rule, the man is to be fined the twentieth part of the amount of debt claimed. The man deserves this fine on account of his having transgressed the law

by not satisfying the creditor's claims outside the Court and thereby forcing him to come up to the king.

When the man commits a further transgression by denying the claim, saying—'I do not owe anything to this person,'—then, on the claim being proved, the man is to be fined '*twice as much*'; *i.e.*, double of five per cent.; *i.e.*, ten per cent.

'*Such is the ordinance of Manu*'—Prajāpati; *i.e.*, the Rule or Law propounded by him from the very beginning of creation.

Others have explained the term '*as much*' as referring to the total amount of the claim, *i.e.*, double the sum that is due to the debtor; as it is only thus that the syntactical connection with the term '*debt*' is maintained; otherwise there is a syntactical split; and as no different subject has been mentioned, if it referred to the same subject, then the result would be an option.

This however is not right; for the double of the amount of debt would be too much. Even though the subject is not definitely mentioned, yet on account of juxtaposition, it is only right that it should be taken as referring to '*five per cent.*'—(139)

XXV. Rates of Interest

VERSE CXL

THE MONEY-LENDER SHALL STIPULATE AN INTEREST SANCTIONED BY VASHIṢṬHA, FOR INCREASING THE CAPITAL. HE SHALL TAKE MONTHLY THE EIGHTIETH PART OF A HUNDRED.—(140)

Bhāṣya.

'*He shall take, etc.*' (the second half of the verse) represents the injunction; and what is said regarding its being '*sanctioned by Vashiṣṭha*' is merely commendatory;—the sense being that 'Vashiṣṭha, the revered sage, cognisant of all that happens at the three points of time and devoid of greed, accepted interest, hence it is commendable.' By its means one's capital increases, and yet there is no impropriety in it on the ground of its being indicative of greed.

'*Stipulate*,'—Employ; at the time that he is advancing money to the debtor, he should clearly stipulate the rate of interest.

In the case of all things that can be counted or measured,—such as clothes, grains, gold and so forth– the rate of interest is to be as here laid down. In the case of liquor, however, the rate of interest has been declared to be eight times of the principal,—and this is an exception to the limit that the total amount of the debt shall not exceed the double of the principal, as we shall explain later on.—(140)

VERSE CXLI

OR, REMEMBERING THE DUTY OF THE RIGHTEOUS, HE MAY TAKE TWO IN THE HUNDRED; BY TAKING TWO PER CENT. HE DOES NOT INCUR THE SIN OF EXTORTION.—(141)

Bhāṣya.

'*Two in the hundred*',—*i.e.*, for each hundred an interest of two is paid.

This rule permitting an interest of two per cent. is for that money-lender who, having a large family, is unable to maintain them if he charges only the rate laid down in the preceding verse.

The term '*monthly*' (of the preceding verse) has to be construed with this also.

'*Remembering, etc.*';—all this is merely commendatory. The meaning is that the taking of this interest also is within the province of the conduct of good men; so that by charging it one does not lose his righteousness.

The author proceeds to show that such a money-lender is not regarded as greedy of wealth—'*He does not incur the sin of extortion*'; the sin involved in unlawfully taking what belongs to another is called 'the sin of extortion'; and he who does such an act is said to '*incur the sin of extortion.*'—(141)

VERSE CXLII

HE MAY CHARGE JUST TWO, THREE, FOUR OR FIVE PER CENT. PER MONTH FROM THE FOUR CASTES RESPECTIVELY.—(142)

Bhāṣya.

From the four castes, *Brāhmaṇa* and the rest, respectively, he shall charge the four rates, two per cent. and so forth. These four rates are sanctioned in relation to the four castes respectively.

'*Just*,'—*i.e.*, not exceeding by even a half or a quarter. This term has been added to preclude the idea that the expression 'two per cent.' may be applicable to 'two and a quarter' or 'two and a half.' Just as the shortest alteration, even by a single syllable, of a name makes the name a totally different one (so the addition of even a quarter would make the rate totally different).

This also is an alternative open to the man who cannot maintain his family at the former rate of interest; or to one who has only a small capital; or to cases where the borrowers are not specially righteous persons.

The propriety of this would be analogous to the act of doing a righteous act with the money extorted from wicked persons.

For '*samam*,' '*just*,' another reading is '*samām*.'

This rate of interest however is to be charged for one year only, and not beyond that; as the rates being high, the principal might become more than doubled.—(142)

XXVI. Pledges

VERSE CXLIII

BUT WHEN THERE IS PROFITABLE PLEDGE, HE SHALL RECEIVE NO INTEREST ON THE LOAN; AND THERE SHALL BE NEITHER TRANSFERENCE NOR SALE OF THE PLEDGE, MERELY BY THE LAPSE OF TIME.—(143)

Bhāṣya.

Money-lending is done in various forms—with pledge as well as without pledge. Pledge also is of two kinds—*to be used* and *to be kept*. That *to be used* is again of two kinds—(*a*) that in which the profit consists in some form of product of the pledged article and (*b*) that which is used as it stands; the milch cow belongs to the former class, and wrought gold, etc., to the latter.

What is said here regarding the case '*when there is profitable pledge*' refers to the pledge *to be used.*

The '*profitable pledge*' is of various kinds, such as the milch cow, fields, gardens and so forth.

While such a pledge is being used by the money-lender, '*he shall receive no interest*,' such as that laid down in the foregoing verses—'*on the loan*.' That is, he who is deriving a profit from the pledge shall receive no other kind of interest.

In the case of the pledge *to be kept* also, '*merely by the lapse of time*,'—simply because a long time has elapsed,—even becoming double of its former size, and the pledge remains unredeemed,—'*there shall be neither transference nor selling*.' '*Transference*' consists in the article being duly made over to another person. Even though already doubled, the principal, even on the transference of the pledge, shall continue

to grow: as is going to be declared later on—'*sakṛdāhṛta,*' etc. '*Selling*' is well known. This also shall not be done.

"What then is to be done in such cases?"

The man shall continue to use (derive profit from) the pledge, till the principal has become doubled and repaid; when it shall be redeemed. When the doubled principal has been repaid, the pledge 'to be used' shall cease to be used, and that 'to be kept' shall be returned. The pledge 'to be used' shall remain with the creditor till the debt is repaid,—unless there is some damage. If there is some damage done, and the creditor somehow has become too poor, having no other property except that pledged article, then, having waited for some time, he shall report it to the king and sell the article; and from the sale-proceeds he shall take an amount which is just the double of his principal, and hand over to a middle-man the balance for being paid over to the debtor.

"But it is declared that—'*if on the principal having been doubled, the pledge is not redeemed, it becomes lost (forfeited)' (Yājñavalkya, *Vyavahāra*, 58)"

This we are going to explain. As a matter of fact, this 'forfeiture' or 'loss' does not mean that the former owner entirely loses his ownership, and the person having it acquires ownership over it. For when there can be no 'transference or sale,' what sort of 'ownership' would the man acquire? Hence, by virtue of the said prohibition of 'transference or sale,' the 'loss' or 'forfeiture' must be taken to mean that the creditor who may have ceased to use it becomes entitled to use it again. Or the term 'loss' may be taken as referring to such things as clothes and the like, which naturally become 'lost' (perished) by using; and which cannot continue to be *used* even when they have lost their original form,—in the manner in which lands and other such things can continue to be. It is in this sense that the Smṛti has to be explained.

In fact, the term 'loss' has been used in the figurative sense, of permitting the *use* of it; while the prohibition of

'transference and sale' must be taken in its literal sense; as this latter is not capable of being understood in a figurative sense. It is in this sense that we have another *Smṛti* text to the effect that 'there shall be no selling or handing over of pledges, etc., etc.' What is spoken of as 'handing over' in this text is the same as 'transference,' as is clear from its being mentioned along with 'sale,'—both of them being similar in certain respects.—(143)

VERSE CXLIV

THE PLEDGE SHALL NOT BE USED BY FORCE; USING IT THUS, HE SHALL RENOUNCE THE INTEREST; HE SHALL SATISFY THE OTHER PARTY WITH ITS PRICE; OTHERWISE HE WOULD BE A STEALER OF THE PLEDGE.—(144)

Bhāṣya.

"It has been already declared in the preceding verse that—'when there is a profitable pledge, etc.'—(why then should this be repeated?)."

True; but the case referred to in the preceding verse is that 'where the *using* or *profit* is commensurate with the *interest*; when however the amount of interest is large, while the *profit* is small, if the creditor uses the pledge by force, he loses the whole amount of interest. In a case again where the pledge is in the form of land or a cow or some such thing, and the profit derived from it is not commensurate with the interest,—if the debtor does not pay the accumulated interest, and the amount of the principal also has not become doubled,—all the interest that the creditor obtains is in the form of the profit derived from the pledge; so that in this case the man's interest is to be computed at what he has derived by way of that profit.

In a case where the pledge is in the form of clothes and other similar things, which cease to exist, by use, the creditor should '*satisfy*' the debtor '*with its price*,' and himself

receive his interest. For, if he did not pay the price of the pledged article, '*he would be a stealer of the pledge*;' *i.e.*, he should be made to pay that penalty which he would have had to pay if he had actually stolen an article of the same kind as the pledge.

'*Stealer*,' '*stēna*,' is *thief*.

Others explain the verse in the following manner:—In the event of forcible use, there is loss of interest; if the thing is to be used, it should be so only on payment of its proper price to the debtor; this has been thus declared—'the creditor should be made to pay the price of the thing in gold, in a case where it is used.'

This verse refers to the case where the debtor, at the time of depositing the pledge, distinctly says—"see that my pledge is not lost,—do not use it please,—in a few days I shall redeem it,"—and yet the creditor, not minding this, does make use of the article.—(144)

VERSE CXLV

PLEDGES AND DEPOSITS SHOULD NOT SUFFER MUCH LAPSE OF TIME; FOR BEING LEFT OVER FOR A LONG TIME, THEY WOULD BE LIABLE TO APPROPRIATION.—(145)

Bhāṣya.

'*Pledges*'—already explained;—'*Deposit*'—is that which is allowed to be used through considerations of friendship;—these should not be allowed to remain for a very long time; they should be redeemed as soon as the stipulated time arrives.

The time for the redeeming of the pledge is just when the principal, with accrued interest, has become double; and there is 'lapse' of this time, if the thing is not redeemed then.

For the deposit also, the right time to recover it is before the other party has occasion to think that the thing belongs

to him by reason of his having the use of it. Beyond this time, there is 'lapse of time.'

Neither pledges nor deposits '*should suffer much lapse of time*;'—*i.e.*, they should not be allowed to suffer it.

The author explains the reason for this:—'*They would be liable to appropriation*';—if they were allowed to remain longer than the above-mentioned time, and were not recovered till then, they would be liable to be appropriated.

For this reason, one should try to redeem the pledge as soon as the principal has become doubled.

This is merely a friendly advice; as a matter of fact, there can be no 'appropriation' of pledges and deposits, by any lapse of time; as it is going to be declared (in 149) that—'a pledge.... cannot be lost in consequence of use'; and it is the same idea that is referred to in the present text.

Others have held that the present advice refers to *pledges* only,—in reference to those cases where, even after the principal has become doubled, the party, through sheer wickedness, goes on wasting time, under the idea that the principal cannot increase any further,—and it is not possible to deposit or sell the thing at the time anywhere else,—and he is urged to this step only through his hatred for the creditor, who is prevented from earning more interest on his capital. And it is with reference to such cases that it has been declared that '*they should be appropriated*' (this being the meaning of the words in this case). That is, if the man desists from redeeming the pledge with such motives, his right over the thing ceases. But if one fails to redeem it, for want of money,—in his case there should be neither 'transference nor selling' [as said above (143)].

Or the assertion '*they become liable to appropriation*' may be taken as referring to the case where the debtor desists from redeeming the pledge, thinking that it lies safest in the custody of another person.—(145)

VERSE CXLVI

THINGS USED THROUGH FAVOUR ARE NEVER FORFEITED; SUCH AS A MILCH COW, A CAMEL, AN OX OR THE ANIMAL THAT IS MADE OVER FOR BREAKING IN.—(146)

Bhāṣya.

'*Favour*'—friendliness. When such things as the '*Cow*' and the rest are being used solely through the favour of the owner, they do not become '*forfeited.*' 'Forfeiture' means the passing of the ownership of the former owner and the coming in of that of the person using them. And such 'forfeiture' does not take place in the case of the cow and other things being used through favour.

"As a matter of fact, in the case of all *deposits*, there is no forfeiture by mere using,—as is going to be declared under 149 below—what is the special feature there in the case of the cow and other things (that they should be separately specified)?"

Our answer is as follows:—The denial (in 149) of forfeiture in regard to deposits is in view of its possibility in accordance with the general law of forfeiture laid down in verse 147, which would be applicable to those cases also when the thing has been used for ten years without its losing its former shape.—So far as the cow and other animals are concerned, they cannot be articles of 'deposit'; and hence people might be led to think that these do not come within the said prohibition (in 149). (Hence the necessity of emphasising the non-forfeiture of these separately.)

The name 'milch cow' is based upon the cow *giving milk*; this condition can last at best for one year; after which, becoming fit for the bull, she would cease to be 'milch' if she became pregnant; and after this, there might be an idea that she belongs to this person (who is keeping her) and not to Devadatta (to whom she really belonged); because what

had been given by the latter for the use of the former was the cow calved for the first time; and Devadatta allowed the man to use her and still continued to see her being used, in a form which is not the same as that of the animal that had been given in 'deposit'; and hence the 'deposit' is that which is to be used, and the use is not of that thing; under the circumstances, what sort of a 'deposit' would it be? And as the prohibition (under 149) pertains to 'deposits,' and the cow in question has ceased to be a 'deposit',—it was necessary to make a separate effort for precluding her forfeiture.

As regards the camel and other animals mentioned, after they have been used for ten years, they become entirely changed in shape. So that these also would cease to be 'deposits' (in the true sense of the term).

'*Vahan*,' ('ox') has been taken by some as a participial adjective (meaning 'riding') qualifying the word '*horse*,'; they hold that what is here laid down does not apply to the *ox*. Others again take it as standing for the donkey, the mule and other beasts of burden.

'*For breaking in*,'—ox and other animals—'*made over*'—given for that purpose. Others hold that the present verse serves the purpose of implying the optional character of the prohibition. In the case of 'deposits' other than those enumerated here, there is sometimes 'forfeiture.' For instance, when clothes are used through favour and become worn out, there is 'forfeiture.' For when a new clothing has been handed over for use, and it becomes worn out by use, there can be no opportunity for the former owner to say—'Let me have my clothing,—if it has become worn out, let me have its price and thereby redeem the deposit.'—(146)

VERSE CXLVII

WHATEVER THING THE OWNER MEEKLY SEES BEING USED BY OTHERS IN HIS PRESENCE, FOR TEN YEARS,—THAT THING HE DOES NOT DESERVE TO RECOVER.—(147)

Bhāṣya.

'*Whatever thing being used*,' etc.—such is the construction, '*being used*' being brought back to the beginning.

'*Owner*;'—though this general term has been used, yet the person meant is the owner of the thing whose use is being ignored.

'*Whatever thing*'—includes all kinds of property, slaves, slave-girls, utensils large and small, and so forth; though all this is not usually spoken of as '*dhana*,' 'property,' 'wealth,'—which name is applied to gold, silver and other valuable articles.

The meaning of the sentence thus is this:—"When the owner of a property sees, for ten years, a certain property of his being used by another person,—and says nothing,—*i.e.*, does not file a suit before the king, nor says to the user before his family 'how is it that you are using this thing which belongs to me?'—such a man, after the lapse of ten years, does not deserve to '*recover*'—obtain possession of—that thing;—*i.e.*, his ownership entirely ceases."

What is meant by '*seeing*' is *knowledge*, and not actual *seeing with the eyes*; which latter is expressed by the term '*in his presence*.'

'*By others*'—is explained by some to mean *not by collaterals or relatives*; another *Smṛti* text adding these 'collaterals and relatives' as exceptions to the present rule:—'when a thing is used by relatives and collaterals, the ownership does not cease.'

This however is not right; as this explanation would make the rule indefinite; it being uncertain who are to be

regarded as 'collaterals' and 'relatives.' If 'relationship' in general were meant, then there would be no one left (who would not bear some sort of relationship to the man). Consequently the text must be taken to mean that the rule here laid down applies to all cases where some one else uses a thing belonging to another person.

In this case however the term 'others' would be merely re-iterative, and as such superfluous. For there is no person to whom the term 'other' could be applicable. The wife, the father and the son are all spoken of as 'one's own self;' specially in such texts as—'the wife is the half of one's self,' 'it is one's own self that is called the *son*.' Hence between husband and wife, or between father and son, mere *using* cannot be regarded as a ground of ownership. In fact in their case also, if they are separated, when the time of using has arrived, if one does not use it, this fact becomes a precluder of his ownership. In the case of the wife's dowry, if it has been pledged by the husband, her ownership does not cease by *using*, so long as the husband is alive, and the reason for this is that she is entirely dependent upon him, and there is no absolute separation between them ; her dowry also has to be looked after by the husband ; and the law also (verse 149) is found to make an exception in favour of the property of the king, the Vedic scholar, and women.

The present verse having described the loss of ownership of the owner who ignores adverse possession, the next verse proceeds to show to whom the said property passes over.—(147)

VERSE CXLVIII

IF THE OWNER IS NEITHER AN IDIOT NOR A MINOR, AND THE PROPERTY IS USED IN HIS OWN COUNTRY,—IT BECOMES FRUSTRATED IN LAW, AND THE USER BECOMES ENTITLED TO THE PROPERTY.—(148)

Bhāṣya.

This verse is supplementary to what has been said (in the preceding verse) regarding the man not deserving to recover the property—'*if he is neither an idiot nor a minor.*' One who is devoid of intelligence is called as '*idiot*;' and one who is still a child is a '*minor*;' one who has not reached his sixteenth year is called a '*minor.*'

What is mentioned here is only by way of illustration, standing, as it does, for those conditions that make one unable to protect his own interests; such conditions for instance, as disability due to wine or gambling, protracted illness, being taken up entirely by austerities and study, want of business-capacity, deafness.

In the case of the property of persons suffering from such disabilities, even prolonged using does not create ownership in the person using it.

'*Is used in his country*'.—The term '*his*' refers to the actual owner. The '*country*' of the Kashmiri people is Kashmir, that of the inhabitant of Pañchāla is Pañchāla. The sense is that—'if both the owner and the user are inhabitants of the same country.'

What is meant is that the rule laid down applies to the case of persons suffering from a disability; all the rest are mere details in the explanation; as it has been already pointed out that the mention of the 'idiot' and the 'minor' is merely indicative. Hence the sense is that—'in cases where it is possible for the owner to know that his property is being enjoyed by another, if the latter continues to enjoy it for ten years, then he becomes entitled to it,—*i.e.*, the ownership passes over to him.'

Objection.—(A) "It is not right that *enjoyment* or *possession* should lead to ownership; on the contrary, it is *ownership* that leads to *possession*. If *possession* were to lead to *ownership*, there would be confusion. (B) Further, as regards the limit of ten years that has been set forth, other Smṛiti-texts

do not admit this in the case of all kinds of property. For instance—'in the case of landed property ownership ceases after *twenty years*, if the owner sees it being enjoyed and says nothing'—says Yājñavalkya (*Vyavahāra*, 24). Others again do not admit the passing away of ownership even after twenty years of adverse possession. They say—'If one enjoys, without title, a property even for hundreds of years, he should be punished by the king with the penalty due to thieves' (Nārada, 87);—and again, 'Where possession is found, but no title for it, the rule is that it is the title, and not the possession, that should form the ground of ownership.' (Nārada, 84)."

Those who hold to the view of possession for three generations (leading to the passing over of ownership) quote the following text—'Even in the absence of title, if a property has been in total possession for three generations, it cannot be recovered, having passed from one generation to another for three generations' (Nārada, 91). And the meaning of this is as follows:—'Authority' means a deed of gift or some such document;—in the absence of such proof, what has been enjoyed by the father, grandfather, and great-grandfather, becomes the property of the fourth generation; and it is not so after twenty years only. Elsewhere again we read—'The best authority consists in a gift-deed, possession accompanied by title is the second, and possession is the last,—in connection with immovable property.' Now, it is in the case of the third generation—and not in that of father and grandfather only—that ownership would be established by possession only:—but in his case also it is not possession during twenty years only. Others again hold that mere possession—even though extending over a hundred years—cannot be regarded as a ground for ownership; and in support of this they quote the following texts:—(*a*) 'If a person enjoys a property without title,—even for hundreds of years, he should be punished with the penalty of a thief' (Nārada, 87); (*b*) 'If one man puts forward only possession, and no title, he should be regarded as a thief' (Nārada, 86); (*c*) "The law

is that it is authority, and not possession, that forms the ground of ownership' (Nārada, 84). What has been referred to above in regard to possession extending over 'hundreds of years' (not being a right ground), is long-extending possession by one and the same person; and such possession cannot establish one's ownership, unless there has been possession by his father and grandfather also.

"But how can one person possess a property for *hundreds of years* ?"

There is no force in this objection. Such expressions as 'hundred years,' 'thousand years' and the like are used only in the sense of *long periods of time* ; *e.g.*, in such statements—'The man lives for a hundred years, of hundred glories and hundred organs.'

The upshot of all this is that in the case of the first generation of the possessor, mere possession, even though extending over a period of twenty years or more, does not establish *ownership*,—which means that the son of such a possessor also does not acquire the ownership; and thus the meaning of the texts is just as is directly signified by their words.

As a matter of fact, it is not possible for the 'Title' of possession to be remembered for 'several hundred years' : so that if the production of such title were insisted upon, kings would come to confiscate all those properties that may have belonged of yore to temples, Brāhmaṇas, monasteries and village-communities. As for written land-grants, these also could not have their writings verified and recognised, after the lapse of a long time, as actually written by the king's scribes ; and the grants themselves might be suspected to be forged. Hence long-standing possession is regarded as indicative of the presence of valid title in the shape of a gift-deed and the like, and it is for this reason that possession has been mentioned among 'proofs' in the text—'There are three grounds of ownership—documentary evidence, witnesses and possession' (Nārada, 69),—and not as a 'ground of ownership,' which are mentioned in the text—'There are seven marks of acquiring

property' (Manu, 10-115), and also in the text—'Learning, Bravery, Austerity, Daughter, etc., etc.'

Or the assertion of Nārada—'If a man enjoys a property without authority, etc.'—may be taken as referring to a case where there is suspicion of forcible possession; as in the same context we find the text—'(1) Misrepresented Deposits, (2) Stolen goods, (3) Deposits, (4) Goods retained forcibly, (5) What is obtained by begging, and (6) What is possessed secretly,—these six are property possessed without title' (Nārada, 92).

"But this has been already declared in another text:—'Deposits, Boundaries, etc.' (Manu, 8-159, and Nārada, 8)."

What these latter texts refer to is possession during three generations only, and the text under consideration precludes the propriety of possession beyond that also; as is clearly indicated by the phrase 'for several hundred years.'

In the text under consideration, '*anvāhitam*,' 'Misrepresented Deposits,' stands for an article which is actually pledged in a form different from that in which it was shown at the time of the transaction;—'stolen goods' for what is obtained by fraud or by breaking through a wall at night, and so forth; while 'forcible retention' implies the use of force; this is the difference between the two;—the rest is quite clear.

"If it is only *possession for three generations* that is a ground for title, what then is the meaning of the text—'One loses his ownership over land, if he sees it being enjoyed by another, without saying anything' (Yājñavalkya, *Vyavahāra*, 24)."

Some people offer the following explanation:—The text refers to the case where the man has been in possession of a property for some time, and a documentary flaw, or some such vitiating element, happens to be detected,—*e.g.*, it is found that it was executed under pressure, or some letters are found to have been rubbed out, and so forth;—as 'twenty years' is ample time for the ascertaining of the exact nature of the suspicious document.

Others however explain it as referring to the case where the man offers the same plot of land as pledge to one person, after having previously pledged it to another,—and the title of the one is prior to that of the other; and what is meant is that in such a case, notwithstanding the priority of the title, greater validity attaches to the 'possession' by the other person, if it has continued for twenty years.

This however is not right; for it has been declared that, when a person has accepted a pledge, it means that it has been accepted as 'deposit'; and in the case of land, this acceptance implies a desire for possession; so that in a case like this, the character of the 'pledge' becomes established by possession during a short time also. It is with reference to such cases that we have the declaration—'What a man is not possessed of, that is not his own; even though there be documentary proof and witnesses be living; specially in the case of immovables' (Nārada, 77). The term '*specially*' implies that in the case of cows, horses, etc., there *is* ownership even without 'possession' or 'use'; as these latter are not always *used*; and one does not always know what benefits he may derive from such pledges as these latter. In the case of land on the other hand, it yields its produce at all times; and hence in the absence of actual 'use' or 'possession,' the fact of its having been 'pledged' cannot be established.

If the pledger ignores the fact of his having pledged the land to one person, and offers it to another, even during the period of its possession by the first pledgee,—and the second pledgee also has accepted it,—while the former pledgee, either through the distraction of other business or on account of the distance of the place, has failed to 'accept' and take possession of it,—in such a case the circumstances do not deprive the first pledgee of his right over the land. When, however, immediately after having received the deposit, the man is banished by the king, or is attacked by serious illness, and there is no authorised person to look after his property,—if the man returns after a long time, if he can prove his clear title to it,

he does obtain possession of the land, even though in the meantime it may have been pledged to another person.

Others explain the text as referring to the subject of the revision and equalising of the shares of brothers, who have separated and divided their property in unequal shares (twenty years ago); the meaning being that there can be no such revision after twenty years.

But if this were all that is meant, this should have occurred under the context dealing with that subject. In fact, a general statement, made apart from a particular context, indicates that it pertains to other subjects also.

Others again take it as referring to the case of 'possession' where an uncultivated plot of land has been cultivated by a man; and they declare that in this case if the possession has continued for twenty years, and its exact extent has not been checked by means of chains and surveying instruments,—then all this checking cannot be done after the lapse of that time.

The revered teachers however explain as follows:—When two men, inhabitants of the same place, possessing similar powers, similar natures, equal wealth,—not related to one another,—happen to have the same interest in a certain immovable property,—if one of them permits the other to enjoy it during the said time (twenty years), the former retains no right over the property.

This however would be incompatible with the rule laying down the period as 'three generations.'

Thus then, in as much as the various rules bearing upon the subject are found to be incompatible with one another,—which incompatibility cannot be set aside by any assumptions,—what has got to be ascertained in each case is if there is any clear title to ownership,—and in the event of there being none, if the property is in the possession of another party; if it is, then the decision must proceed on the basis of such possession only.

Though there are several kinds of titles to ownership,—such as gift, sale, pledge and so forth,—yet in the event of

none of these titles being present, if it is shown that there has been possession extending over twenty years, without break, the right course is to regard it as a case of 'pledge.' Such ownership based upon possession is ephemeral, and can be set aside if there is deterioration in the property concerned. (?) Thus it is that possession during three generations creates the rights of ownership in all cases; possibility of gift or sale, etc., also there could be only for one year. So that in the case of possession for twenty years, there is no incongruity at all.

In a case however where both persons are absolutely without title, and are asserting themselves by mere force,—the prior possession, even though of longer standing, is set aside by the twenty years' possession, which is more recent and hence free from all suspicion. That is to say, possession during three generations is set aside in favour of possession, the exact period of whose duration is precisely ascertainable.

'*Becomes frustrated in law*';—the phrase '*in law*' is added in order to preclude the notion of its being 'morally right.' For if some flaw in the possession were detected, the possession could be defeated; so that if the possessor bases his case entirely upon the circumstance that there is no evidence forthcoming to show that his possession is fraudulent, —his victory cannot be regarded as morally right; so the fact remains that the other party loses his case simply on account of the said possession.—(148)

VERSE CXLIX

A PLEDGE, A BOUNDARY, MINOR'S PROPERTY, A DEPOSIT, A PROPERTY ENJOYED BY FAVOUR, WOMEN, KING'S PROPERTY, AND THE PROPERTY OF A VEDIC SCHOLAR ARE NOT LOST BY ADVERSE POSSESSION.—(149)

Bhāṣya.

'*Ādhi*' is that which is *pledged*; an article given as pledge,—such as cattle, land, gold and so forth,—to the

creditor; and recovered from him (upon re-payment of the debt).

'*Upanidhi*' has been explained,—in accordance with another treatise (Yājñavalkya, 2.65) as a deposit, whose form is not shown and which is handed over, covered with cloth and sealed. But this being already included under '*deposit*,' it is better to take the term '*upanidhi*' as standing for what is given for use, through friendliness and favour.

'*Boundary*'—the boundary-line between villages, etc. It is quite possible that it being a public concern, men are likely to ignore encroachments upon it. In the case of houses, the boundary-line, marked by ditches or walls, two, three or four cubits in size, is common to both; and if either side of it happens to crumble down in time, as the matter would be a slight one, even encroachment might be ignored for some time by a certain person. But since in such matters also the owner fearing the loss of ownership through gift, etc., his sons or grandsons do discover some hidden marks of the original boundary and assert their claims to the recovery of the boundary encroached upon.

'*Minor's property*';—this has been added only by way of illustration; the *minor* having been already referred to by the name '*poganḍa*' (in Verse 148).

'*Women*,'—slave-girls or wife; as no other woman, save these two, have anywhere been described as 'property,' ownership over which could be lost through possession extending over ten years, as spoken of in Verse 147.

Objection.—"But the text (147) does not speak of '*property*' at all; the expression used is '*whatever thing*,' which refers to *things in general*."

No; the use of the term '*dhani*,' '*owner*,' clearly indicates that the expression 'whatever thing' refers to *property*, which, in this case, is used in the sense of *anything that is used*; and this mention of women as 'property' indicates all kinds of possessions. From this analogy of 'property,' males also, as slaves, are actually regarded as 'property.'

'*The king's property* ;'—the '*kings*' meant here are the rulers of provinces ; the property belonging to such rulers. These people have vast properties, which they cannot always watch over carefully ; so that if their property were liable to be lost through adverse possession, they would soon be reduced to penury.

'*The property of Vedic Scholars*'—though poor in comparison,—has yet got to be preserved with care.—(149)

VERSE CL

THE FOOL WHO, WITHOUT THE OWNER'S PERMISSION, USES A DEPOSIT, SHALL HAVE TO REMIT HALF THE AMOUNT OF THE INTEREST, AS COMPENSATION FOR SUCH USE.—(150)

Bhāṣya.

It has been declared (under 144)—'a deposit should not be used by force,—by using it one renounces the interest ;' and what was meant there was the absolute appropriation of the entire deposit ; and when such using has been forbidden, it is only right that by using a deposit by force, the man should lose the entire amount of his interest. By merely using the article however, the deposit does not become destroyed, it only becomes deteriorated, in colour, brightness and decorations ; and the present verse lays down that in such cases the man shall lose half the amount of his interest.

In a case however, where the deposit consists of new and valuable ornaments or clothes, and on being worn they become spoilt,—there is to be not merely loss of interest, but the man is to be made to pay the price of the property spoilt ; this is as the matter has been explained by great scholars.

Ṛju (Yajvan) (?) however has explained as follows :—In a case where business is carried on by the master as well as by the servant, and a pledge has been deposited by the servant, and seen by the master also,—if after some time, the pledger says to the servant—'I have need for the article pledged,'—and

is permitted by him to use it; whereupon, if the master, on seeing him using it, cancels the pledge and takes it back;—in such a case half the amount of interest has to be renounced.

This however is not right; as, under the circumstances, transactions carried on by the master or the servant stand upon the same footing. So that when the using has been permitted by one, it cannot be held to be not permitted by the other and hence illegal. In such a case, it is actual 'ownership' that forms the denotation of the term 'owner.' Otherwise, the person who deposits the article would certainly appear to be the 'owner'; but the servant is not the 'owner'; so that if he does give away the thing, he would be only a thief. For this reason '*ownership*' has to be attributed to him. Hence when the using has been permitted by the servant, it is treated as permitted by the master also.

For these reasons, the meaning of the verse must be as previously explained and the mention of the 'owner' is only for the purpose of filling up the metre.

Between the two terms in the expression—'*Bhuṅkte-vichakṣaṇaḥ*,' an 'a' is to be understood as present in a merged form due to the proximity of the two vowels (*ē* and *a*). That man who entertains the idea—'my interest is already safe, so that the use of the article is an additional gain'—is called here a '*fool*.' For no such transaction is sanctioned by law as would involve both the securing of interest and the using of the pledged article; hence it is only the interest that should be earned.

'*Compensation*'—Expiatory price; exchange.

Others have explained the prohibition contained in the present verse as referring to the case where the pledge is not redeemed, even after the principal has been doubled; and they hold that the fault in this case is comparatively insignificant (hence only half the interest is lost).

But first of all, these persons should be required to point out the subject of Yājñavalkya's assertion (Vyavahāra-58) regarding the 'pledge becoming lost if it is not redeemed on the principal having been doubled.'—(150)

XXVII. Limitation of Interest.

VERSE CLI

INTEREST ON MONEY-LOANS STIPULATED AT ONE TIME SHALL NOT EXCEED THE DOUBLE; IN THE CASE OF GRAINS, FRUITS, WOOL AND BEASTS OF BURDEN, IT SHALL NOT GO BEYOND THE QUINTUPLE.—(151)

Bhāṣya.

'*Kusīda,*' '*monetary loans,*'—the advancing of money for earning interest; or the money advanced may itself be called '*Kusīda*'; *i.e.*, the money which is advanced with the idea 'having advanced a small amount I shall get back a larger amount.'

The interest on such loans '*shall not exceed the double;*' —the creditor, having advanced the money to the debtor, shall receive from him only such an amount as may be the double of his principal.

"What the text says is that the interest should become 'Double'; and this, along with the principal itself, should make the total amount received *thrice* the principal."

It is not so; in the term '*Dviguṇa,*' 'double,' the term '*guṇa*' signifies *part*; and when we come to look out for a *whole* of which it would be the '*part,*' it is the *principal* which, from the context, appears to us as the 'whole.' Hence when the text speaks of the 'double,' what is meant is the double of the capital advanced. To this end we have other Smṛti-texts—(*a*) 'When there is delay, the capital

advanced shall become doubled' (Gautama, 12. 31); and (*b*) 'The deposit is to be redeemed when the principal has become doubled' (Yājñavalkya, Vyavahāra, 64).

'Interest' is paid in several forms :—(1) when coins are advanced, interest is paid in coins; (2) sometimes it is paid in the form of progeny; as in the case of female cattle; (3) sometimes in the form of the use of pledges, in the shape of cattle, land and the like.

The doubling of the interest is, according to some people, meant to pertain to those cases where the interest paid is of the same kind as the capital advanced; and the reason for this lies in the fact that it is only in such cases that the exact 'double' can be ascertained; while in the case of interest in the form of 'progeny' of animals, it cannot be ascertained whether the 'doubling' is to be computed by *number*, or size or measure; as in the case of such animals as elephants and horses, it is found that when they are bought or sold, their price depends upon their size; as a rule animals of larger size fetching higher prices.

"There is similarity of kind in the *progeny* also; the progeny of the cow is of the same species as the cow. So that there is no justification for any distinction as that into (*a*) 'interest of the same kind' and (*b*) 'progeny.'"

The answer to this is as follows :—'Sameness of kind' does not depend only upon belonging to the same species; in fact it depends upon similarity of age, size and other factors. Hence the distinction is quite correct. Further, in the case of interest in the form of the *use of deposits* also, how would the 'double' be determined? And when cows and lands are pledged, the benefit derived from the use of the cow is in the form of *milk*, while in the case of land, it is in the form of fodder and other produce; so that in these cases also what sort of 'double' would there be? In actual usage it is found that if the principal gold is not paid, land continues to be used and enjoyed for hundreds of years. Says Yāyñavalkya (*Vyavahāra*, 90)—'The pledge continues to be enjoyed so long as the capital is not paid off.' [From all this it

is clear that the limit of 'double' cannot be applicable to all cases.]

Our answer to this explanation of some people is as follows:—When what is asserted is the 'doubling' in regard to 'interest' in general, how can we restrict it to any particular kind of interest only? When the words of the text afford a certain meaning in a general form, we cannot restrict it to any particular case, unless there is some authority for doing it. As regards the argument that "there can be no *doubling* in the case of *progeny*,"—just please make an effort to understand the matter: when an animal is pledged, its value is duly determined, and certainly the value of its progeny also could be similarly determined. Similarly in the case of the enjoyment of landed property also, when the fodder and grains become ripened, it can be easily determined when their value becomes equivalent to the principal.

Then again, the term '*Guṇa*' (contained in '*dviguṇa*,' 'double') signifies *usefulness* also. "In that case what is there that would be as *useful* as the principal?" It can always be found if a certain thing serves any useful purpose at all. And if the interest accruing be computed only at the price obtained from the sale of the grain and fodder produced from the land,—then also it would be possible for the interest to become equivalent to the principal,—even though there may be no exact equality of size and other details.

As for the 'local custom' that you have put forward,—that argument has been answered by yourself, when you called it 'local.' Further, whenever there is any chance of customs being abandoned, it is Smṛti-texts that serve the useful purpose of affording the requisite check.

As regards the text—'the pledge is enjoyed so long as the principal is not paid up,'—the phrase 'so long as the principal is not paid up' can be taken to mean 'so long as it has not become doubled.' In fact, with a view to reconciling it with other Smṛti-texts, it is best to take it in this sense. This has been fully explained by us elsewhere.

'Stipulated at one time.'—*i.e.*, what has been fixed upon at one time, in cases of the renewal of the loan. 'Stipulating' means *fixing*; and what is settling by verbal contract is also *fixing*. The loan is renewed, when the principal has become doubled and is not paid up. Even after the principal has been doubled, if the creditor is willing to earn further interest on it, and the debtor also wishes to retain the money for the purpose of carrying on some large business, he renews the deed, entering as principal, the former principal along with the accrued interest, and thenceforward it is on this principal that the interest begins to accrue. And in that case, the principal, even though doubled, continues to grow further.

It continues to grow also when transferred to another person; for instance, when the principal has become doubled and the creditor has need of the money and asks the debtor to pay, the latter takes him to a third party, and says 'this man will make the payment for me in so many days'; and in this case during these additional days, further interest shall accrue. The third party in this case is not a 'surety' for payment, but only a 'trustee,' the man who actually does the payment. This is what has been explained by Ṛju to be the meaning of the debt being 'transferred to another person.'

Or, 'transference to another person' may refer to the following transaction:—Even before the principal has become actually doubled, if the pledge is handed over to another person,—when the money with accrued interest has become doubled, then it is only right and proper that the pledge should be redeemed; but in this case it is taken away before the principal has reached the limit,—then, interest begins to accrue from that date, and the limit of 'double' shall be computed upon the total amount of the principal along with the interest accrued up to the date of the transference. That is, when the creditor, with the sanction of the debtor, hands over the latter's pledge to a third party and receives his due from him, then the interest continues to accrue.

In both these cases (of 'transference to another person'), before the doubling of the principal, the money-lender is,

somehow or other, made to agree to receive payment from another person ; or, 'transference to another person' may mean that case where the debtor takes a further loan from the creditor, but having to go away to foreign lands, transfers the loan by means of another document.

Ṛju however holds that, except in the case of the same debtor renewing the loan, no interest beyond the doubling of the principal can accrue. It is in accordance with this view that he has declared—'In the case of transference to another person, there should be renewal of the deed, and the need for this we shall explain.'

Some people have held the following view :—"The rule laid down in the present text refers to a case where the whole amount of interest accruing during the year is *paid at one time* [this being the meaning of the pharse '*sakṛdāhitā*] ; whereas if all the interest that has fallen due is not paid off wholly, then it will go on accruing, even beyond the limit of 'double the principal.'"

But in this explanation, neither the negative particle '*na*' nor the term '*āhita*' retains its real meaning. For if the interest accrued during the first year has been received, and at the end of the second year, the interest is again brought up for payment,—where would there be any chance of the principal becoming doubled ?

"The prohibition of excess may apply to a case where the debtor brings up for payment the amount of the principal which has become doubled with accrued interest. Even before the principal becomes doubled, if the debtor is able to pay up the interest only, he can do so, and there can be no limit placed upon the principal to be accepted."

This view also is nothing. When the debtor is ready to pay up, he deserves favourable consideration, and he should not be made to pay more ; and if a debtor is forced by the king to pay up, it cannot be right to remit the excess in his case. Nor does the term '*āhitā*' of the text mean this.

If the word is read as '*āhṛtā*,' then the exact signification of the term '*sakṛt*' would be doubtful; reason would be scattered to the wings, and the text would be a self-conceived one, and not the one propounded by Manu.

From all this it follows, that the most reasonable conclusion is as explained by us above.

In the case of grains and other things, it does not exceed the '*quintuple*'—*i.e.*, five times.

Another Smṛti text lays down 'quadruple' in the case of grains :—'In the case of gold, cloth and grains, the interest is to be double, triple and quadruple respectively' (Nārada, 107). And the law on this point is as follows : If the money-lender has become reduced to poverty, and the debtor has become opulent with much wealth, having earned much wealth by means of the grain he had borrowed,—then the interest is to be *five times*; and in other cases it is to be only *four times*.

'*Sada*'—stands for the *fruit of trees*,—'grains' being mentioned separately.

'*Lava*'—stands, among northerners, for *wool*.

'*Beasts of burden*'—ass, camel, ox and so forth.—(151)

VERSE CLII

INTEREST, STIPULATED IN CONTRAVENTION OF THE LAW, BEING EXCESSIVE, IS NOT PAYABLE. THEY DECLARE THIS TO BE THE USURER'S WAY. IT IS ONLY FIVE PER CENT. TO WHICH THE MAN IS ENTITLED.—(152)

Bhāṣya.

'*Anusāra*' is that which is followed in all matters; *i.e.*, the law laid down by the scriptures. The law in relation to interests is diverse: one lays down the rate as the eightieth part of the hundred, and another as five per cent. If the rate of interest is stipulated '*in contravention of*'—in excess of—these sanctioned rates,—it is '*not payable*'—by the

debtor to the creditor.—Why ?—Because it is '*excessive*'—*i.e.*, against the law.

In support of this the text puts forward a commendatory declaration—'*this they declare to be the usurer's way.*' The term '*kusīda*'—means *that which is followed by evil persons*; and then the persons themselves. This '*way*'—path, conduct—is of evil persons, and not of good men. This is a deprecation of the act referred to.

If the lender is anxious to make as much money as possible out of the transaction, under the impression that the borrower is going to carry on extensive business with the help of the capital he is going to lend, then he may obtain *five per cent.*, irrespectively of the caste of the borrower. What is meant is that this is all that he should seek to obtain.

Another reading is '*kṛtā tu sārādadhikā*'; and the meaning of the text would in that case be that—'if, at the outset, on account of the man's poverty, a low rate of interest is fixed, but subsequently, the man having acquired much wealth, if, *on account of his opulence*—'*sārāt*'—a large rate is demanded, this cannot be payable, since all that the man is entitled to is *five per cent.*—(152)

VERSE CLIII

ONE SHALL NOT PAY OR RECEIVE AN INTEREST BEYOND THE ANNUAL, OR WHAT IS UNAPPROVED (OR UNACCUMULATED); NOR COMPOUND INTEREST, NOR PERIODICAL INTEREST, NOR THAT WHICH IS (PRIVATELY) STIPULATED, NOR CORPOREAL.—(153)

Bhāṣya.

'*Sāmvatsarī*'—*means* '*pertaining to the samvatsara,*' '*annual*'; what is in excess of this '*is atisāmvatsarī,*' '*beyond the annual*'; the idea of *pertinence* being implied by the nominal affix. Or we may first form the compound '*atisamvatsara*' in the sense of 'beyond the year,' and then have the vowel-changes, giving the form '*atisāmvatsarī.*'

The interest that has been sanctioned in connection with all castes,—at the rate of 5 per cent. shall be realised for one year, and after the lapse of the year. Or, the meaning may be that no interest shall be realised during the year,—and after the year the debtor shall not delay the payment of interest.

'*Nirharēt*,' '*shall pay*,'—*i.e.*, taking out of his own stock, offer to the creditor; what is paid before the year has expired would also be '*beyond the annual*.'

Or, the meaning may be that at the time of the transaction itself, it shall be determined whether the interest shall be computed monthly or yearly. It would not be right for a man desirous of earning interest for two years, to make the other party accept the loan for that long period;—the idea in his mind being—'what would be the use of earning the interest for a few months only?—if the principal is allowed to remain with him for two years, then I shall earn a decent interest.' In such a case the man would so arrange the advance to the debtor that the interest would be paid after two years. That such a course would not be right is clearly indicated by such texts as—'one shall neither pay, nor cause another to pay, interest in such a single instalment as may be beyond the power of the man to pay.' In the case of interest payable monthly, the debtor is made to pay the interest on the second day after the lapse of the month; similarly when the stipulation is that the interest shall be paid yearly, it should be paid on the second day after the lapse of the year,—and not computed by any longer time.

Nor shall he receive what is '*adṛṣṭā*' 'unapproved';—*i.e.*, a rate not sanctioned by the scriptures;—*i.e.*, rates above 5 per cent., such as 10 per cent., or 11 per cent.

Some people hold that this is only a reiteration of what has been said (under 152) that 'an excessive rate of interest is not payable.'

The right explanation of '*adṛṣṭā*' therefore is '*unaccumulated*';—the meaning being that interest shall not be

received by the day, or by the month, until it has accumulated during several months.

"But under 142 it has been declared that one may take 'monthly interest.'"

What is meant by that is that the interest shall be computed by the month, and not that it shall be received month by month.

'*Compound interest*';—the various kinds of interest from here down to the '*corporeal*,' should be construed with '*he shall not pay*.' Though the prohibition is literally addressed to the debtor, yet it is really meant to be addressed to the creditor; for the debtor, being in distress,—what is there that he may not do?

Or, what is directly meant by '*nirharet*' is *receiving* itself; so that the prohibition would be addressed literally to the creditor directly.

"In as much as the rates of interest have been fixed at 2, 3, 4 or 5 per cent. there is no possibility of 'compound interest' being paid or received; what then is the need of the present prohibition?"

Our answer is as follows:—This prohibition itself is indicative of the fact that it is open to the creditor to charge such interest also. Just as the prohibition that 'the Brāhmaṇa shall not sing Sāman during Fire-laying' is indicative of the fact that though no such Sama-singing is actually prescribed in connection with Fire-laying, yet it is open to the priest to do it. Thus the possibility of the various kinds of interest here mentioned being charged is indicated by this prohibition itself. For instance, in the case of men carrying on inferior kinds of business, the 'compound' and other interests are actually paid; it is thus that in connection with traders on land and water, etc., varying rates of interest have been prescribed: 'Those trading in forests should pay ten per cent., those on the sea twenty per cent.; or among all castes people may pay any interest that has been stipulated among themselves' (Yājñavalkya, *Vyavahāra*, 38). 'Interest

stipulated among themselves' has thus been sanctioned by this other Smṛti-text among all castes, in relation to only those that trade in the forest, etc.; so that 'compound interest' is not permissible in other cases.

Interest charged on interest is called '*compound interest*,' '*chakravṛddhi*.' Others however explain the term '*chakravṛddhi*' as 'wheel-interest'; that in the case of wheeled conveyances, like the cart, etc., interest is paid only for those days on which they are used; and on days when the man has to go by boat, in the crossing of large rivers, no interest is paid. In the case of oxen and other things that are used as conveyances, interest is paid in this same manner and it is this that is called 'wheel-interest.'

'*Periodical interest*';—"Interest computed month by month is called 'periodical'"—says a text. But 'month' is mentioned only by way of illustration; what is meant is that interest which is not allowed to accumulate, being realised day by day, or month by month, and no time is allowed. Another kind of 'periodical interest' is that in which the creditor has stipulated—'if you do not pay the interest at such and such a time, my principal shall become doubled.'

'*Privately stipulated*';—when the creditor and the debtor fix upon a special rate of interest, in view of each other's requirements. This also is possible only in the case of distant traders. As for others, it has been declared—'successive interest is not payable' and 'he is entitled to only 5 per cent.'

Or, when what is lent is *gold*, and what is received in interest is *cloth*—whose real character is that of a *deposit*,—it is a case of '*privately stipulated*' interest; and this would have the character of usufruct, in the case of what has not been kept as a pledge.

'*Corporeal*'—payable by bodily labour. This would be possible only in the case of labourers......(?)—(153)

VERSE CLIV

HE WHO, UNABLE TO REPAY THE DEBT, WISHES TO RENEW THE CONTRACT, SHALL CHANGE THE BOND, AFTER PAYING THE ACCRUED INTEREST.—(154)

Bhāṣya.

If a man, having his wealth reduced, is unable to pay the doubled principal, he should be made to renew the contract, and to '*change the deed*'—*i.e.*, the document properly attested. But he should pay the interest that has already accrued.

This is an exception to what has been said as to the creditor not receiving more than double of his principal;—since the loan-transaction remains in force.

"How does it follow that there is an exception to the non-exceeding of the double?"

Because in this case there is nothing to show whether further interest accrues upon the principal 'along with the accrued interest, or upon the principal only; all that is mentioned is the 'renewal of the contract,' which is explained in other words—'he shall *change the bond*.'

"If further interest does not accrue on past interest, for what purpose should the bond be altered?"

The answer is as follows:—When interest has ceased to accrue, and the money is not paid, there is every possibility of laxity (on the part of the debtor), and of the witnesses (of the old document), forgetting all about the transaction; and a debt thus ignored for ten years would become non-payable; as has been declared in the following text.—'Where a document is ignored for ten years, there can be no suit on its basis; especially in the case of assaults (?).'

This is how it has been explained by older writers.

The following verse (from Nārada, 131) lays down the favour that the king may show towards the debtor:

If by lapse of time the debtor becomes bereft of the capacity to pay, he should be made to pay the debt according to his capacity, taking into consideration the time and place and the rate of interest.

[The meaning of this is as follows]—

If, through evil fate, the debtor becomes reduced to poverty, he shall not be chastised with imprisonment in the jail and soforth. "What is there to be done?" Whenever he should happen to have any property at all, he should be made to repay the debt by small instalments;—this is what is meant by the phrase '*according to his capacity*.' This is what is going to be described as—'the debt should be liquidated even by bodily labour, etc., etc.' (8.177.)

In view of this text, the use of altering the bond is just as we have explained above.

VERSE CLV

NOT HAVING BROUGHT FORWARD THE GOLD, HE SHOULD RENEW THE BOND; AND HE SHOULD PAY AS MUCH INTEREST AS MAY BE POSSIBLE.—(155)

Bhāṣya.

'*Not having brought forward*'—paid up—'*the gold*,'—*i.e.*, the amount of gold due as interest,—'*he should renew the bond*';—*i.e.*, in the presence of witnesses he should make the declaration—'I owe this man so much principal and so much interest,'—and should put this down in writing also; entering the amount of interest for one year;—so explain some people.

And in the new bond, when the principal along with accrued interest has been entered as the principal, the rate of interest stipulated should be very low; just such as may not become too much of a burden for the man; that is, it should be lower than the former rate.

Yajvan, Asahāya and Nārada hold that at the time of the renewal of the bond the debtor should be made to pay even a shell, if he is able to do so; so that the witnesses may not be witnesses to a mere verbal statement, but to the actual payment of even a small amount as interest; so that they actually see the money-transaction; and when they come to be examined,—which may be any time during ten years,—they may have their mind firm, on account of being able to recall what they had heard and also actually seen with their eyes.—(155)

VERSE CLVI

WHEN A MAN HAS ENTERED INTO A 'WHEEL-CONTRACT' WITH REFERENCE TO A PARTICULAR PLACE OR TIME,—IF HE FAILS IN REGARD TO THE PEACE OR TIME, HE SHALL NOT SUFFER ITS REWARD.—(156)

Bhāṣya.

'I am going to Benares,—my purpose being the acquiring of merit as well as trading in vessels; and such and such an amount shall be the interest paid upon the wheeled conveyance you supply';—this contract having been entered into, if the man does not actually proceed to Benares, being forced back with only a little profit, by difficulties in the form of forests, river-crossings and anarchism,—then he should not be made to pay the entire amount of interest stipulated; for how can the reward that would be due to those who have gone to Benares be due to those who never went to that place? When the oxen go a long distance, it involves much labour on their part; so that it is right that the reward of their owner should be commensurate with that labour; but when they have returned sooner than stipulated, it is open to the owner to make further profit on them by hiring them out afresh.

This is what is meant by 'failure' in the text.

Similarly as regards *time* also, the contract being—'These oxen may work for me for a month, and your interest shall be so much,'—if the man returns the bullocks in a fortnight (the man does not have to pay the full reward).

In both these cases, the debtor has '*entered into the wheel-contract*'—*i.e.*, accepted its terms—and in this contract a special place or time has been stipulated,—if then, on account of reasons described above, he has not kept up to the stipulated place or time, and has thus 'failed' in regard to them,—'*he shall not suffer*'—have to pay—'*the reward*,' in the form of the stipulated interest.—(156)

VERSE CLVII

AS REGARDS THE EXACT AMOUNT TO BE PAID, THE INTEREST SHALL BE THAT WHICH IS FIXED BY PERSONS EXPERT IN SEA-VOYAGES, AND THOSE CAPABLE OF CALCULATING THE PROFITS IN CONNECTION WITH A PARTICULAR PLACE AND TIME.—(157)

Bhāṣya.

The present verse is an answer to the question—"In the case cited above, is there to be paid no interest at all? Or is it to be 5 *per cent.*?"

'*Sea-voyage*' has been mentioned only by way of illustration; the sense is that whatever interest is fixed by traders who know all about journey by land and water, should be determined as the exact amount to be paid.

'*Those capable of calculating the profits in connection with a particular place and time,*'—persons who know what amount of profit is to be made where,—and not only those, pilots and others, who are *expert in sea-voyages.*

Others have explained the foregoing verses in the following manner, making gratuitous additions to its words:—The

last verse (157) is in answer to the question.—"In a case where the debtor has entered into a contract on the strength of profits to be made at a particular place or time,—but on reaching that place, he does not make the profit that he had expected,—then what amount of interest should he pay?" And the mention of the term '*chakravṛddhi*' (which, in this interpretation would not mean 'wheel-interest,' but 'compound interest,' which the debtor agrees to pay, on expectation of large profits) would include the 'privately stipulated' interest also. In such a case, the king shall decide as due that amount of interest which may be fixed by those tradesmen who know each other's circumstances and the chances of profit and loss.

'*As regards the exact amount to be paid*,' '*adhigamam prati*,'—'*Prati*' is a proposition denoting 'indication,' and as such governs the Accusative in '*adhigamam*,' according to Pāṇini 1-4-90.

XXVIII. Sureties.

VERSE CLVIII

When a man stands surety for the appearance of a person, if he does not produce him, he shall pay his debt out of his own property.—(158)

Bhāṣya.

In the case of Loan-transactions there are two kinds of security—a Surety and a Pledge. The present verse deals with the case where the security is in the form of a surety.

There are three kinds of Surety—(1) for appearance, (2) for guarantee and (3) for payment. The present text refers to the surety for appearance.

'*If a man stands surety for the appearance of a person,*'—saying 'I shall produce him at such and such a place'—if he fails to do so, he shall pay the debt out of his own property.

The term '*debt*' stands for all objects of dispute. The meaning therefore is that in suits relating to any object, the surety should have to make good that object. In the case of defamation, assault, adultery and other offences, if the surety has given the undertaking that 'if I do not produce the accused I shall pay such and such a sum,' then he shall have to pay that sum; but in the event of there being no such undertaking, he should be made to pay only the fine that the king imposes upon the accused. .....(?)—(158)

VERSE CLIX

But the son shall not be liable to pay the surety-money, or a futile gift, or gambling debts, or debts due to liquor, or the balance of fines and duties.—(159)

Bhāṣya.

'*Prātibhāvyam*' *is that which is due from the surety*,—*i.e.*, the paying off of the debt due by the party for whom he has stood surety; it is this that is called '*surety-money*.'

What is denied here is the son's *liability*; and the denial of liability implies the denial of its being his duty to pay; and in as much as a man never pays what it is not his duty to pay, the meaning of the text is that *he should not pay*. The sense of the root '*arh*' is to be thus explained in accordance with the sense of the infinitive verb with which it occurs.

"But how could there be any idea of the son's liability to pay the surety-money, etc., when these were not *debts* incurred by his father?"

There is no force in this objection. When a man has undertaken to pay a certain sum it is as good as a 'debt,' since the result is the same. And when definitely known, it is a 'debt,' and as such may be considered as being due to be paid by the son. That is why this liability has got to be denied.

'*Futile gift*';—Gift promised in joke or under similar circumstances, made in some such form as 'I request you to have this man paid such and such an amount by such and such a banker.' If a messenger has been sent with this message, but the payment is not actually made, either on account of the banker's absence, or of some other reason,—and the father dies in the meantime,—the son cannot be made to pay the gift.

Debts incurred in gambling are '*gambling debts*'; *i.e.*, the amount that has been actually lost at play, or the money that can be proved to have been borrowed for the purpose of gambling, shall not be paid. In the case of a person who abandons his family and relations and lives and sleeps constantly at gambling dens, and is known to be always playing,—it can be easily ascertained that his debts are all due to gambling.

Debts due to drinking are said to be, '*due to liquor*'; '*liquor*' standing for all sorts of intoxicating drugs. Hence the present denial partains to the debts of a man who is an inveterate drunkard.

'*Balance of fines and duties*';—if the father has paid a part of the fine or part of the duty,—but did not pay the entire amounts,—then the balance cannot be realised from the son. That is, he cannot be made to pay what the father did not pay.

Another *Smṛti text* lays it down in general terms—'The son shall not be made to pay surety-money, trade-duties, debts due to gambling and drinking, and fines.' (*Gautama*, 12.41.)

Thus then, there is an option. If the crime for which the fine had been inflicted was a serious one, or the property inherited from the father is a large one, then the *balance* only of the fine, as of the duties, shall be remitted; but if they have not been serious, then the whole shall be remitted.—(159)

VERSE CLX

THE LAW LAID DOWN IN THE PRECEDING VERSE SHALL APPLY TO THE CASE OF 'SURETY FOR APPEARANCE'; IN THE CASE OF THE DEATH OF THE 'SURETY FOR PAYMENT' HOWEVER, THE KING SHALL MAKE THE HEIRS ALSO TO PAY UP.—(160)

Bhāṣya.

The '*law laid down*'—by me—'*in the preceding verse*,' —*viz.*, 'the surety-money due from the father shall not be payable by the son'—applies only to the case of '*surety for appearance*.'

This assertion might give rise to the idea that the son should be made to pay in the case of 'surety for guarantee,' —hence the author proceeds to add—'In the case of the *death of the surety for payment*,' the heirs are made to pay up, and not in the case of any other kind of surety.

" If such is the meaning, then the first half of the verse is superfluous; for when it is declared that the son is liable only for the dues by the *Surety for Payment*, it follows that he is not liable for the dues by any other form of surety. If it be argued that it is for the purpose of making things clear that the first half is added,—then the case of 'surety for guarantee' also should have been added, otherwise, it would be doubtful whether the denial (contained in the preceding verse), excluded as it would be from the two cases of surety, is a prohibition or a positive injunction."

There can be no such doubt; since the matter has been clearly stated in another Smṛti—'In a case where the surety for appearance, or the surety for confidence, has died, the sons should not pay the dues, but they should pay in the case of the Surety for Payment,' (Yājñavalkya, *Vyavahāra*, 54). In the present text also, as the assertion '*in the case of the death of Surety for Payment*, etc.,' is in the form of a positive injunction, it cannot become applicable to the case of any other form of surety. There is nothing wrong however in the implications of merely re-iterative assertions (as the first half of the verse is) being extended (to cases other than those directly mentioned). If the question is raised, as to the purpose for which such re-iteration should have been made,—our answer is that it is a peculiarity of Manu's style of writing.—(160)

VERSE CLXI

"BY WHAT MEANS THEN WOULD THE CREDITOR SEEK TO OBTAIN HIS DUES, IN THE EVENT OF THE DEATH OF THE SURETY OTHER THAN THAT FOR 'PAYMENT,' WHOSE CHARACTER IS FULLY KNOWN?"—(161)

Bhāṣya.

Having raised a question by means of the present verse, the Author answers it in the next verse: and the grounds for doubt are expressed by means of the two words '*other than*

that for payment' and '*whose character is fully known*';—the three words with the locative ending—'*adātari*,' '*pratibhuvi*' and '*vijñātaprakṛtaü*' being construed together.

'*By what means would the Creditor seek to obtain his dues?*'—Should he seek to obtain it entirely by his own operations? Or should he also urge the surety's son?

"Why should there be any such doubt, when it has been distinctly asserted that in the case of the death of sureties other than that for payment, the sons shall not be liable?—what connection then can the sons have with such dues?"

The doubt arises because the surety is one '*whose character is fully known*'; which means that it is fully known that the man had received payment for becoming 'surety'; and this fact, being known, might give rise to the idea that his sons should be liable; since it is possible that the amount paid to the surety was for the purpose of paying off the debt in question.

The particle '*punaḥ*,' '*then*,' serves to distinguish the present from the preceding verse; the meaning being—'if the liability falls upon the sons of the surety for payment only, then in the case of the death of one who is surety *not for payment*, from whom would the creditor, after his death, seek to obtain his dues?'

The rest has been already explained.

'*Parīpsā*' is *seeking to obtain*.—(161)

VERSE CLXII

IF THE SURETY WERE ONE TO WHOM MONEY HAD BEEN MADE OVER AND WHO HAD ENOUGH MONEY,—THEN HE TO WHOM IT HAD BEEN MADE OVER SHALL PAY IT OUT OF HIS OWN PROPERTY; SUCH IS THE SETTLED RULE.—(162)

Bhāṣya.

If the surety is one who is '*Nirādiṣṭadhanaḥ*,' a person to whom money has been handed over by the debtor, with the

instruction—'In the event of my being unable to pay, you will please clear off the debt with this,'—and hence '*alandhanaḥ*,' having '*enough money*';—*i.e.*, who had made over to him money sufficient to pay off the whole amount due to the creditor;—then he should be made to pay. But if the amount made over to him was small, while the amount of the debt is large, then he should not be made to pay.

This verse supplies the answer to the question in the preceding verse.

Though the money had been made over to the surety, yet it is the son who is to be made to pay out as of his own property (the surety having died). Hence the words should be construed to mean 'the son of the surety to whom money had been made over'; as it is the *son* that forms the subject-matter of the context; as for the surety himself, his liability would follow from the mere fact of his being a 'surety.'

'*Such is the settled rule*,'—ordinance deduced from the scriptures.

What is intended having been already expressed by the term '*alandhanaḥ*,' 'who had *enough money*,'—the addition of the term '*nirādiṣṭadhanaḥ*,' '*to whom money had been made over*,' is due to the fact of the treatise being a metrical one (which admits of superfluous words and expressions).—(162)

XXIX. Contracts, when invalid.

VERSE CLXIII

A TRANSACTION IS NOT VALID WHEN EFFECTED BY ONE WHO IS DRUNK, OR INSANE, OR DISTRESSED, OR WHOLLY DEPENDENT, OR MINOR, OR SENILE, OR UNAUTHORISED—(163)

Bhāṣya.

The term '*vyavahāra*' is synonymous to '*kārya*,' which stands for all such transactions as gifts, deposits, sales and so forth, as also the documents supporting these;—all this is '*not valid*'; *i.e.*, even though it has been done, it is as good as undone.

'*Drunk*' and '*insane*';—these terms have been already explained before.

'*Distressed*,'—suffering the pangs caused by the loss of wealth or relatives; as also one who apprehends an imminent danger.

'Drunk' and the other terms being used in their literal sense, the situation spoken of here is applicable only so long as the men are actually under the influence of '*drink*' and other conditions.

What is mentioned here is only by way of illustration; and it stands for 'any man who is not quite in his senses.' To this end it has been declared—'Business should be done with a man when he is in his senses; as when he is not under his senses, he is not master of himself, and this invalidates the transaction.' A man is said to be 'not in his senses' when his mind is perturbed and he is incapable of understanding his business. This has been thus described—'men beset with lust and anger, or distraction or dangers and vices, as also those

under the influence of love or hatred are said to be '*not in their senses*' (*Nārada*, 1.41). In this text, the first line has to be treated as a double compound term '*kāma*' to '*vyasana*' for one copulative compound, and this with the participal adjective '*pīḍita*' forms the Instrumental Determinative Compound, in accordance with Pāṇini, 2.1.32; hence the man excluded is one who is actually suffering from the mentioned distractions. Thus the man who is '*beset with lust*' is always hankering after the embraces of the woman he loves;—the man who is preoccupied with gambling or other similar things is said to be 'beset with distractions.'

Such persons as have been enumerated here,—even though they be real owners of the property concerned in the transaction,—are not in a position to grasp the real nature of 'ownership' or 'surety' or such other details of a transaction; and as such their action cannot be regarded as valid. And the reason for this lies in the fact that having had their minds preoccupied by other things, they cannot clearly grasp what they are saying, when, on being asked by some one, they may say—'give this to such and such a man,' or that 'I have promised to be surety for such an amount, or for such an object,' and so forth. In fact they accept anything that the man asks for, being desirous as he is of getting rid of the man whose presence is an obstacle to what may be engaging attention at the time—and they say 'you go, I shall do all that you say,' and thus place themselves entirely under the control of another person. This is what is meant by what has been said above regarding the man being 'not master of himself'; and the meaning is that 'just as the action of the man who is not master of himself is not valid, so also is the action of one who, though master of himself, is under the influences mentioned'; and just as the man who is not master of himself cannot make use of what is his own, so also the man who is overpowered by lust and other things is unable to understand the details of the transaction and discriminate between its advantages and disadvantages; and in this sense he is 'not master of himself.'

'*Distressed*' (in Nārada's text) has been already explained. Though the terms '*abhiyukta*,' 'distracted' and '*ārta*' (distressed) denote the *qualified person*, yet in the context in which they occur they have to be taken as standing for the *qualities* of 'distraction' and 'distress' (these being construed with '*pīḍita*,' '*beset with*' '*vices*'—arising from lust, anger and other causes, such as hunting and the like.

Any man who is devoting his entire attention to any matter is said to be 'beset with distraction or vice'; as also is the person who, though not actually engaged in any pet vice, is rapt in expounding its virtues.

Or (with a view to retain the literal meaning of the terms '*abhiyukta*' and '*ārta*'), the two terms '*kāma*' ('lust') and '*krodha*' ('anger') may be taken as standing for the 'lustful' and the 'angry'; and in this case the participial adjective '*pīḍita*,' 'beset with,' would be compounded with the copulative compound formed of only 'danger' and 'vice'; the other terms of the compound standing by themselves.

'*Those under the influence of*'—*i.e.*, overpowered by—'*love and hatred*';—'Love' means *attachment to a person regarded as his own*; when a man regards another as his own,—even though he be not actually related to him,—then, whenever he comes to think of him, or whenever anything good happens to him, he has a feeling of satisfaction; this is what constitutes 'love.' The reverse of this is 'hatred'; when a man is regarded as one's enemy, there is a feeling of satisfaction when anything wrong happens to him. Such is the nature of 'love' and 'hatred.'

Under everyone of the conditions described, the man's mind is perturbed, and unable to be fixed, even for a moment, upon the business in hand. People under such conditions say one thing and do another. It is only when men are in this condition that they are really 'not in their senses.' Otherwise (if the words were taken in their literal sense), in as much as all men are (more or less) 'beset with lust, etc.,' or 'distressed' by old age, or some disease of the eyes or of the head, —all would have to be regarded as 'not in his senses'; and

the 'wholly dependent' Born Slave, the son and the disciple and the wife would not be so regarded (even though, as 'not master of themselves,' these also have been declared to be persons whose transaction is not valid). Though literally the *Born Slave* alone is '*wholly dependent*,' yet since this latter term has been taken to be indicative of 'those who are not master of themselves,' the son, the disciple and the wife all become included under this same category.

Anything that these persons do, in the shape of making gifts out of their own property and the like, after having obtained the permission of their master, is quite valid. Says *Nārada* (1.39-40)—'The transaction entered into by a minor, or by one who is not master of himself, is declared to be as good as undone'; and again,—'The Disciple is not master of himself, as it is the teacher in whom the character of the master rests; wives and sons and all such dependents as the slave and the like, are also not master of themselves; the master being the householder himself on whom the property has devolved from his ancestors.' (*Nārada*, 1.33-34.)

"What is said regarding wives not being masters of their property and husbands alone being the masters, cannot be right; since property being common to both, how can the husband alone, without the concurrence of his wife, be entitled to enter into such transactions as gifts, sales and the like?"

This has been already explained, by the following text of Nārada (1.26)—'All that is done by women is invalid, except in times of distress.'

Further, Nārada (1.42), having mentioned the 'eldest members of the family,' goes on to add that 'it is only when the transaction of selling is entered into by him that it is valid'; and what is said here in regard to 'selling' applies to all transactions relating to property in general. So that, just as in the case of the junior male members of the family, so in the case of the female members also, 'dependence' means 'absence of control'; and 'ownership' would be incompatible with this 'dependence'; because 'dependence' denotes ***subjection to the control of others, i.e.***, acting up to the wishes

of other persons. Thus then, if the 'dependent' person is incapable of making use of any property except in accordance with the wish of another person, what sort of 'ownership' would belong to him or her? It may be argued that 'ownership' and 'dependence' would be quite compatible, as in the case of the minor,—in the sense that while he is not fit to enter into any such transactions as gift, sale or pledge, yet he is at full liberty to spend the property upon himself; for his own enjoyment he is quite free to make use of it any way he chooses; while to the other transactions he would be entitled only after he has reached majority. But even this could not be possible in the case of women, who are never free from 'subjection' or 'dependence'; as says Manu (5-147).—'Be she a minor, or a full-grown woman, or an elderly lady, the woman, by herself, shall not enter into any transaction; such is the settled law.' It is for this reason that in the case of women, 'ownership' and 'subjection' have been held to be incompatible.

This 'subjection' of women however does not mean that women are not to make use of their property; all that is meant is that they are not to make improper use of it, in the shape of indiscriminate gifts or sale. So that what is meant by saying that 'women are *dependent* upon others' is that by themselves they are incapable of judging what would be beneficial for themselves, or what person deserves a gift of gold or land, or to whom a daughter should be given in marriage; or from whom a certain article should be purchased, or to whom something should be sold and so forth. It is for this reason that at the time that they are executing a bond or some such deed, it is necessary that they should obtain the sanction of their husband or some such relative; because if the business were done by herself alone, it would be open to her to say—'I know nothing about this,—I was cheated by you'; if, on the other hand, the sanction of the husband and the relations has been previously obtained, what could she say? It is in view of this that it has been declared —' Transactions entered into by women also are valid, if they

are sanctioned by the husband, or by the son, in the absence of the husband, or by the king, in the absence of both husband and son.'

Too much of 'subjection' also has been qualified—'when permitted, she is fully capable of spending and selling.' But what is meant by this is that, she is to be permitted to spend money for the up-bringing of children and other such matters, but never to alienate the ownership entirely.

Further, the declaration—'she shall be confined, or abandoned in presence of the family' (Manu, 9.83)—also indicates that there is 'subjection' only of *women*, not *of men*; since even in the case of the outcast, it has been laid down that people should await the completion of the necessary expiatory rites.

It is in accordance with this view that, even in times of direct distress, there is to be no selling of *male* slaves.

Thus, so far as 'subjection' or 'dependence' is concerned, its exact nature as pertaining to the wife, the son, the disciple and the slave, is dependent upon the nature of the man's ownership over each of these. And as the ownership over the family property rests exclusively in the master of the house, the wife has no right to perform even sacrifices out of that property, except with her husband's permission.

"We find that there are two declarations—(*a*) 'on the death of the husband, the woman continues to live under her sons'; and again (*b*) 'so long as his parents are alive, the man shall remain subject to them, even though he may have become old,'—which latter places the son totally under subjection; so that these two texts are naturally contradictory."

There is no contradiction: what is said in (*b*) is that 'the son shall remain under his mother, *during his minority*'; and the subjection of the mother to the son [asserted in (*a*)] means that he is to guard his mother's property against dangers from thieves and others. And what is meant by the son's subjection to his father refers to the state in which the son lives with the father and has not set up a separate household. When he has set up a separate household and acquired his

own property, then 'the son shall be treated as a friend, after the age of sixteen years'; which means that he is entirely master of himself.

The '*minor*' referred to in the text is one who is below sixteen years of age, and has not entered business.

'*Senile*'—who has lost his memory and become incapable of transacting business. Though it is possible for such a man to be in his senses at times, yet his acts cannot be valid, since there can be no certainty regarding the condition of his mind. When however the old man's wife is carefully looking after his affairs, if a certain act has been done with her sanction, it is to be regarded as valid.

'*Asambaddhakṛtaḥ*'—'*effected by one who is unauthorised.*'—If a man transacts business on behalf of another person, without being authorised by him,—and he is neither his father nor brother,—it is not open to him to say—'this man owes a hundred to Devadatta.' But when a number of brothers do business in common, and are equally entitled and capable of doing it,—if any one of them sells cattle or other property, or pledges a house or some such property, the transaction is quite valid.

The term '*vyavahāra*' in the present text stands for all kinds of business, though from the context it would be restricted to *debt-transactions* only.—(163)

VERSE CLXIV

NO CONTRACT, EVEN THOUGH SUBSTANTIATED, IS VALID, IF WHAT IS CONTRACTED FOR IS CONTRARY TO LAW OR TO ESTABLISHED CUSTOM.—(164)

Bhāṣya.

Words expressive of something to be done is called '*Bhāṣā*,' '*contract*' in general; and what is there laid down should be done.

"Is it meant that no contract is valid?"

No; that only which is '*contrary to law,*'—that is regarded as 'contrary to law,' 'illegal,' which is opposed to practice sanctioned by the scriptures; *e.g.*, interest more than five per cent., the selling of wives and children, the giving away of one's entire hereditary property and so forth.

'*Even though fully substantiated,*'—*i.e.*, reduced to writing, or pledged by a surety, and so forth;—it is '*not valid.*'

'*Custom*'—practice sanctioned by usage;—'*established*'—long-standing, not modern.

This verse is supplementary to what has gone in the preceding verse, regarding the invalidity of gifts and other transactions effected by dependent persons and by persons not in their senses and so forth.—(164)

VERSE CLXV

FRAUDULENT MORTGAGES AND SALES, FRAUDELENT GIFTS AND ACCEPTANCES, AS ALSO ALL WHEREIN HE DETECTS FRAUD—HE SHALL NULLIFY.—(165)

Bhāṣya.

'*Fraud*' is *deceit*; when a certain thing has been mortgaged fraudulently,—*i.e.*, when it is found that it has been done in an improper manner,—then the king shall '*nullify it.*'

A debtor, on being pressed by the creditor, may say 'I have nothing';—on which the latter may say, 'you have a cultivated field, a barren plot, a house, give me these.' In view of the possibility of this demand, the debtor mortgages his property beforehand, to a friend or relative, so that when the demand is actually made, he says—'all this is already mortgaged.' In this case, even though the mortgage-bond may be there, it is easily perceived that there is no real mortgagee in the case; for if there were a real mortgagee, how could it be possible for the property to be still enjoyed by the alleged mortgager? In such a case, having found the mortgage to be

fraudulent, the king should nullify it and make the debtor surrender to the creditor all his cultivated field and other property.

Similarly in a case where the man has acquired a property in one form, but transferred it to another in another form,—this also is a 'fraudulent transaction'; and in this case, when the fraud has been detected, the debtor should be made to execute another transfer-deed in the right form.

So also in the case of sales and other transactions. When a person sells a high-priced article, but does not receive its price from the buyer, but has declared to him 'I have sold this, it is yours,'—then after sometime, it is not open to him to say 'I have not sold it, it is mine.' In fact any rescission of sale cannot be permitted after the lapse of ten days; nor when the sale has been effected by a trustworthy person. That a certain selling-transaction has been fraudulent is to be ascertained, when it is found that either on account of some defect in the article sold, or some other cause, the article sold does not serve the purposes that it was alleged to be able to serve, or is found incapable of being treasured as a valuable thing (?).

'*Fraudulent gift and acceptance*';—though the act of *giving* involves that of accepting also, and hence the one would have implied the other,—neither being possible without the other,—yet the text has mentioned both, for the purpose of filling up the metre. Or such mention was necessary, as otherwise, if only one act were mentioned, the resultant penalty would fall upon the doer of that act only, and not on that of the other, on the ground of this latter not having been directly mentioned. Hence, in order to indicate that the penalty should be inflicted upon the giver and the receiver both, both the acts have had to be mentioned.

"In that case, on the same grounds, in the case of the acts of '*fraudulent mortgage and sale*' also, the other party to the transaction,—the doer of the act of buying for instance —should have been mentioned."

It is not absolutely necessary to do so; since the requisite information is supplied by other *Smṛti-texts*; and since all the Smṛti-texts treat of a common subject, they can always be taken as one conglomerate whole.

E.g., when a thing is owned by two persons, if one of them, after having made a compact with the *receiver*, makes the other partner make the gift to him,—this is a case of '*fraudulent gift and acceptance.*' The compound '*dāna-pratigraham*' is treated as singular, because '*dāna*' and '*pratigraha*' together form a copulative compound.

'*All wherein he detects fraud.*'—'*Fraud*' means *deceit.* Even apart from the acts that have been specified, there are various kinds of fraudulent transactions. For instance, on being pressed by his creditor, a debtor approaches a wealthy person with the appeal—'until you agree to stand surety for me, I shall not leave you';—whereupon the wealthy man makes a secret compact with the creditor—'accept me as the man's surety, and during all this time I shall go on tormenting him, he has done me much wrong, I am standing surety for him only for the purpose of tormenting him, and I shall not be liable to pay anything on his account';—thereupon the creditor says openly to the debtor,—'If you cannot produce a man who will stand surety for you, nor do you propose to liquidate the debt by manual labour or such other means, then your property must be forfeited';—being thus pressed he approaches the aforesaid wealthy person, who however says—'I have never before had any business-transaction with him'; but he later on says again, 'all right, I shall be your surety'; and the debtor also, in view of the trouble in store for him, accepts it.

What is said here should be taken as applying to all such transactions as relate to trades and crafts and so forth It is only by way of illustration that the acts of 'gift, mortgage, and sale' have been specially mentioned. The meaning thus is that whatever transaction the king finds out to be fraudulent, '*he shall nullify*'; even though it has been effected, he shall declare it to be *not-affected,* cancelled,

shall not regard it as valid,—and he shall also punish both parties to the transaction.—(165)

VERSE CLXVI

WHEN THE BORROWER IS LOST, AND THE EXPENDITURE WAS INCURRED BY THE FAMILY, THE DEBT IS TO BE PAID BY THE RELATIVES OUT OF THEIR OWN PROPERTY, EVEN THOUGH THESE MAY HAVE BEEN SEPARATED.—(166)

Bhāṣya.

It has been declared that the debt is to be repaid by the man by whom it was contracted, and in his absence by his son or grandson, and in the absence of those latter, by any one who inherits his property; and from this it would seem that no one else was liable in any circumstances. It is in view of this that the author adds the present verse.

If the man who contracted the debt is '*lost*'—*i.e.*, dead or gone abroad,—'*and the expenditure was incurred by the family,*' —then that debt '*is to be paid by his relatives*'; *i.e.*, by his brother or nephew or uncle, etc.,—'*even though these may have been separated*'—*i.e.*, had divided their property;—'*svataḥ,*' *i.e.*, *out of their own property.*

The debt that has been contracted by one among several brothers has to be repaid out of the common household, specially if there has been no division among them. To this end we have the declaration—'The debt that has been contracted by an unseparated uncle or brother, or by the mother, for the sake of the family, all this is to be paid out of the common property, so that from among the undivided members of a family, if any one has contracted a debt for the sake of the family, it should be paid by all other members,—brother, uncle, nephew or cousin; but not so, if the debt contracted was not for the use of the family.' The term 'unseparated' implies that debt for the use of the whole family is generally contracted only by such persons; for

people who have become separated are never found to be contracting debts for the maintenance of families other than their own.

'*Even though these may have been separated*';—the term 'even' implies that it has to be paid of course by those who are *not separated.* If it so happens that from among separated brothers, one goes abroad, without making any provision for his family, and another, being of a magnanimous temperament, takes upon himself the burden of maintaining his family during his absence—then the absentee should, on his return, repay any debts that his separated brother or uncle may have contracted on behalf of his family.—(166)

VERSE CLXVII

SHOULD EVEN A SERVANT EFFECT A TRANSACTION FOR THE SAKE OF THE FAMILY,—THE MASTER, WHETHER IN HIS OWN COUNTRY OR ABROAD, SHOULD NOT REPUDIATE IT.—(167)

Bhāṣya.

To say nothing of the brother and other relatives: '*for the sake of the family,*' if even a servant should '*effect a transaction,*'—in the form of selling clothes or such things, of contracting debts and doing other kinds of business relating to the proper looking after and cultivation of fields and barren lands,—the master of the house, whether in his own country or abroad, on coming to know of it, '*shall not repudiate it*'; *i.e.*, without thinking over it, he should approve it as properly done. The pronouns 'that,' and 'what,' refer to what is done relating to such fields and agricultural business as may be spoilt.

Others have taken this verse as a hortatory supplement to the foregoing verse, and not as an injunction.

But this is not right; as we find no grounds for taking it as a mere hortatory supplement.

It might be argued that what has been said in verse 163, regarding the 'transaction effected by the drunk, the insane, the servant, etc.,' as being done by persons not master of themselves, makes it clear that the transaction effected by the servant cannot be valid.

But this must refer to the cases where the master is present on the spot, and not otherwise; as in that case the family would be in the risk of being ruined. Hence during the master's absence, what is done by the servant by the maintenance of the family must be regarded as valid (167)

VERSE CLXVIII

WHAT IS GIVEN BY FORCE, WHAT IS ENJOYED BY FORCE, WHAT HAS BEEN CAUSED TO BE WRITTEN BY FORCE,—ALL TRANSACTIONS EFFECTED BY FORCE MANU HAS DECLARED TO BE VOID.—(168)

Bhāṣya.

Just as what is done by minors and by persons who are not their own masters, or who are not in their senses, and what is done fraudulently, is not valid, so also is everything that is done by force. The sense of the present injunction thus is that 'all transactions effected by force should be rescinded': and '*what is given,*' '*what is enjoyed*' and '*what is caused to be written*' have been mentioned only as examples.

'*What is given by force,*'—*e.g.*, when useless fields and farms are given for purposes of cultivation; or when money is forcibly advanced on interest;—all this being forced upon people who are not desirous of being burdened with such gifts, while they are at their own house (and have not gone to seek for them); and it is done on the strength of an ordinary bond (without witness, etc.).

'*All*'—*i.e.,* the transactions similar to those mentioned.

Though this matter has been already dealt with under verse CLXV where all 'fraudulent sales and mortgages, etc.'

are declared to be invalid, yet the two verses have been added for the purpose of including 'fraud' and 'force' also among the invalidating causes. Peculiar is the style adopted by Manu. All that is meant is that 'transactions effected by persons who are drunk or insane or distressed, or minor or senile, and also those done by fraud or force, are not valid;—they are never valid or binding.'—(168)

XXX. The Royal dues and the King's duty regarding them.

VERSE CLXIX

THREE PERSONS SUFFER FOR THE SAKE OF OTHERS : WITNESSES, SURETY AND THE JUDGE ; WHILE FOUR PERSONS PROSPER : THE BRĀHMAṆA, THE AFFLUENT, THE MERCHANT AND THE KING.—(169)

Bhāṣya.

It is only on being requested by another person that the witness, the surety and the Judge should either appear as a witness, stand surety or investigate cases,—and not forcibly (thrusting themselves); hence if these persons should volunteer to do it, their action has no validity.

Or, the meaning may be that 'these persons undergo suffering for doing the work of other persons,—and they have not the slightest selfish motive,—hence they should not be forced to do the work.'

The *Brāhmaṇa* and the rest, on the other hand, '*prosper*,' being approached by others. Hence, the Brāhmaṇa also should not be forced, against his will, to accept a gift.

Or, the meaning may be that—'the prosperity of the Brāhmaṇa is for the good of others,—his action therefore is always for the sake of others, and not for his own,—hence in his case gifts and acceptances should not be rescinded.' There is a popular saying to the effect that 'a gift by force is condemned,' but this does not mean that one should not make a person make gifts to others; the 'force' in this case (which is condemned) is 'importunate begging.'

Similarly the '*affluent*,' the rich man who makes a living by money-lending, should not be forced by such expostulations

as—'why does this man advance money on interest to other persons and not to me ?'

Or, the meaning may be that 'no loan shall be forced upon an unwilling spendthrift;—as it is only when money is lent at the request of the other party that the money-lender prospers, and not when he forces the loan upon him, since such forcing is forbidden by law.'

Similarly, '*the merchant*,' like the money-lender, carries on his business only with a view to add to his wealth. The 'merchant' is one who lives by buying and selling.

'*King*'—prospers only when receiving fines imposed upon persons charged before him,—and not by forcing or encouraging such suits and charges. To this end there is the declaration that 'the king shall not encourage law-suits.'

The case of the 'Brāhmaṇa' and the rest has been cited only for the purpose of illustrating what is enjoined regarding the duty of the *king*.

Or, the whole of the present verse, as also the next, is meant to be illustrative of the entire section.—(169)

VERSE CLXX

EVEN THOUGH REDUCED (IN CIRCUMSTANCES), THE KING SHALL NOT TAKE WHAT OUGHT NOT TO BE TAKEN; AND EVEN THOUGH AFFLUENT, HE SHALL NOT RELINQUISH WHAT OUGHT TO BE TAKEN, BE IT EVER SO SMALL.—(170)

Bhāṣya.

Excepting his legal dues, in the shape of taxes, fines and duties, all that belongs to the citizens is '*what ought not to be taken*' by the king, even though his treasury may have become depleted. But what is legally his due,—by reason of his arranging for the security of their life and property—even a pice of that he shall not relinquish. Since it has been laid down that—'the King shall increase his treasury in the manner of the anthill.'—(170)

VERSE CLXXI

BY THE TAKING OF WHAT HE OUGHT NOT TO TAKE AND BY THE RELINQUISHING OF WHAT HE OUGHT TO TAKE THE KING'S WEAKNESS BECOMES PROCLAIMED, AND HE BECOMES RUINED HERE AS ALSO AFTER DEATH.—(171)

Bhāṣya.

'*What ought not to be taken*' is that which he is not entitled to receive; the verbal affix denoting *title*.

'*Weakness becomes proclaimed*'—by his subjects, who say—'This king punishes us, but he is unable to suppress thieves, robbers and recalcitrant tributary kings'; his enemies also assert their power; and being attacked by these, he becomes disgusted with life and thus '*becomes ruined here*'—in this world—and by taking what he ought not to take—*i.e.*, by imposing illegal fines, etc.—he '*becomes ruined, after death*' also.—(171)

VERSE CLXXII

BY TAKING WHAT IS HIS DUE, BY THE PROPER ADJUSTMENT OF CASTES, AND BY PROTECTING THE WEAK, THE POWER OF THE KING GROWS, AND HE PROSPERS HERE AS ALSO AFTER DEATH.—(172)

Bhāṣya.

'*Svādānam*';—the '*ādāna*,' 'taking' of his '*sva*,' 'what is his due.' Or it may be explained as '*su*'—'good'—'*ādāna*'—'receiving'; 'good' here standing for what is *proper*.

'*Adjustment of castes*,'—*i.e.*, the admixture of the persons of two castes with members of the same caste; we take it as '*two*,' because an 'admixture' presupposes *two* relatives; and as no other relatives are mentioned we take the 'adjustment'

or 'admixture' as pertaining to *castes.* The mixture that takes place among the subdivisions of various castes cannot be called an 'adjustment of the castes,' because it does not pertain to the 'castes' pure and simple.

Ṛju however reads a negative particle here; in which case this would be a reiteration of the prohibition of the 'crossing' of castes.

Also on account of '*protecting the weak*' from the 'strong,' when they are suffering at the hands of these latter, —'*the power of the king grows.*'

The sense of all this is that—'The King should investigate the cases properly, and should never inflict illegal penalties';—and it is as a hortatory supplement to this injunction that we are going to have a number of passages. —(172)

VERSE CLXXIII

FOR THESE REASONS, THE KING SHALL, LIKE YAMA, RENOUNCE HIS LIKES AND DISLIKES, AND BEHAVE IN THE MANNER OF YAMA,—HIS ANGER SUPPRESSED AND HIS SENSES CONTROLLED.—(173)

Bhāṣya.

The same idea is further expounded.

'This servant is my own and hence I *like* him,—this other is only an inhabitant of my kingdom, and is proceeding against the former, hence I *dislike* him';—all such ideas he should renounce.

In the protecting of, and dealings with, his subjects, he shall be entirely impartial, like Yama; the '*manner of Yama*' having been found to be strictly impartial. The form '*yāmyayā*' is explained by the exclusion of the '*yaṇ*' affix mentioned in Pāṇini 6.4.148 and the addition of the syllable '*ya*' under one of the additional rules.

"Who is the person who becomes like Yama?"

He who has '*his anger suppressed and senses controlled*' ;—*i e.*, one should renounce all attachment and thus overcome love and hatred.—(173)

VERSE CLXXIV

IF AN EVIL-MINDED KING, THROUGH FOLLY, DEAL WITH CASES UNJUSTLY,—HIS ENEMIES BRING HIM UNDER THEIR CONTROL IN NO TIME.—(174)

Bhāṣya.

If the king '*deal with cases unjustly*,' it is only '*through folly*' that he neglects the Law; and the fruit of this transgression is that his people having become disaffected, '*his enemies bring him under their control*' ;—when the people become disaffected, they become a lot of angry, greedy, frightened and ill-treated persons, and are easily won over by his enemies, who, thereupon attack him, capture him, strike at him and take away his kingdom ;—this is what is meant by '*bringing under control*.'—(174)

VERSE CLXXV

WHEN HOWEVER, HAVING SUBDUED LOVE AND HATRED, HE DEALS WITH CASES JUSTLY, HIS SUBJECTS TURN TOWARDS HIM, AS THE RIVERS TOWARDS THE OCEAN.—(175)

Bhāṣya.

Just as '*Rivers*'—streams—take refuge with the ocean and having taken refuge, become attached to it, and continue to remain merged in it, and never turn back,—similarly the subjects turn towards the king, when he subdues love and hatred, and coming to have their interests common with the king, become merged into him.—(175)

XXXI. Liquidation of Debts.

VERSE CLXXVI

A PERSON WHO COMPLAINS TO THE KING AGAINST THE CREDITOR TRYING TO ACCOMPLISH HIS PURPOSE BY HIS OWN WILL,—SHOULD BE MADE BY THE KING TO PAY THE FOURTH PART, AND ALSO THE TOTAL AMOUNT TO HIM.—(176)

Bhāṣya.

'*Will*'—wish; and '*by his own will*' means 'without filing his suit with the king,' just as he pleases,—not necessarily by the four sanctioned methods of acquiring property;—if he is complained against, and summoned by the king's officers,—and then if the debtor, on being questioned, should admit the debt, saying 'I owe him such and such an amount,' then the latter should be fined a quarter of that debt, and the total amount due he should be made to pay to the creditor; *e.g.*, if he owes a *hundred*, he should be fined *twenty-five*, and should pay to be creditor a *hundred.* We should not fall into the mistake that *a hundred* less *twenty-five* is to be paid to the king and the balance, *i.e.*, twenty-five to the creditor; as in this case the punishment would fall upon the creditor and not upon the debtor.—(176)

VERSE CLXXVII

EVEN BY LABOUR SHALL THE DEBTOR MAKE GOOD WHAT IS DUE TO THE CREDITOR, IF HE IS OF THE SAME OR OF A LOWER CASTE; THE SUPERIOR PERSON SHALL PAY IT UP GRADUALLY.—(177)

Bhāṣya.

If the debtor has no property, he is not let off simply because he has no property; he should be made to do '*labour*';

i.e., he should become a servant, and the amount of wages that would be payable to the servant for doing the work that he does shall be credited to his account; and when the total amount thus credited equals the sum of his debt along with the interest, then he should be freed from service.

'*Make good to the creditor*'; '*uttamarṇa*' and '*adhamarṇa*' are relative terms applied to one or the other party on the basis of their possessions.

The manual labour is made to be done by all who are of the same caste as, or of the lower caste than, the creditor.

'*The superior person*'—*i.e.*, one belonging to a higher caste, or possessed of higher qualifications—'*shall pay it up gradually*'—*i.e.*, according as he goes on earning. We read in Nārada—'If the Brāhmaṇa is poor, he shall pay up gradually according to his circumstances.' Hence for the liquidation of the creditor's debts, the Brāhmaṇa shall not be made by the king to suffer any pains; and the interests of the creditor too have to be protected.—(177)

VERSE CLXXVIII

IN THIS MANNER SHALL THE KING SETTLE THE DISPUTES OF MEN QUARRELLING AMONG THEMSELVES, DECIDING THEM WITH THE HELP OF WITNESSES AND OTHER EVIDENCE. —(178)

Bhāṣya.

'*This*' refers to all that has been said above.

'*Manner*'—Method.

'*Deciding them with the help of witnesses and other evidence,*'—'Deciding' is to be construed with each of the two names '*sākṣi*' (witness) and '*pratyaya*' (evidence);—'*evidence*' standing for inferences and ordeals.

'*Disputes*'—Not only the *non-payment of debts*, but others, also.

'*Settle*,'—*i.e.*, remove the differences of opinion between the plaintiff and the defendant; and restore them to agreement.

The treatment of the 'non-payment of debts' has been finished. This also is the end of all suits; victory or defeat in all of them being adjudicated on the same lines. Even in the 'Heads of Dispute' that follow there is no other means available for deciding except 'witnesses and the rest'; the only difference that there is is in regard to the character of the punishment to be inflicted, whose exact nature has got to be prescribed; and it is for this purpose that we have the following sections; and in course of this it shall also be determined what is meant by 'Selling without Ownership,' 'Rescission of Sale' and so forth.—(178)

XXXII. (B) Deposits.

VERSE CLXXIX

THE WISE MAN SHALL ENTRUST A DEPOSIT TO ONE WHO IS BORN OF GOOD FAMILY, IS ENDOWED WITH CHARACTER, COGNISANT OF THE LAW, AND TRUTHFUL, HAS A LARGE FOLLOWING, AND IS WEALTHY AND HONOURABLE—(179)

Bhāṣya.

He whose birth and family are well known,—whose forefathers are known to have been learned, righteous and rich,—who never have recourse to improper acts, being mindful of the reputation of their family. In fact such a person is incapable of bearing the slightest blame; and yet it is such people that are subject to severest criticism at the hands of the people.

'*Vṛtta*' is *character, conduct*; *i.e.*, being naturally mindful of public opinion.

'*Cognisant of the law*';—who has become acquainted with the true meaning of Smṛtis, Purāṇas and *Itihāsas* by repeatedly studying them.

'*Truthful*'—who has found, in all business-relations, to speak in strict accordance with real facts.

'*Has a large following*,'—he who is held in high esteem by his friends and relations, as also by the officers of the king,—and is, as such, not amenable to be approached by dishonest state-officials.

The '*wealthy*' man avoids the misappropriation of other people's property, with a view to safeguard his own possessions, and also through fear of transcendental results; the idea in his mind being—'I have enough wealth of my own,

why should I think of the property of others? If I were detected, I would be punished.'

'*Honourable*,'—who always acts righteously, or who is of a straightforward nature.

The nominal affix '*ghañ*' (in the noun '*nikṣēpa*,' '*deposit*') has the force of the passive, and makes the word stand for the gold and other property that are kept as *deposits*.

'*Shall entrust*'—Place.

'*The wise man*';—the man who entrusts deposits in the said manner is '*wise*'; otherwise he becomes a *fool*.

The Author here is offering an advice in the manner of a friend; and the advice has no spiritual purpose behind it, as there is in the case of such acts as the *Aṣṭakā* and the like.

When a 'deposit' is placed with such a person, it is never lost; nor is there any doubt as to who has placed it and with whom. On the other hand, if a person is a pauper, a notorious cheat or drunkard,—even if he be dragged up, no one would even believe that a deposit had been placed with him; when the man is not possessed of a single farthing, how could it be believed that he would have been entrusted with gold or such large properties?—(179)

VERSE CLXXX

IN THE FORM IN WHICH ONE SHALL DEPOSIT A THING IN THE HANDS OF ANOTHER PERSON, IN THAT SAME FORM SHALL THAT THING BE RECEIVED BACK; AS THE DELIVERY SO THE RECOVERY.—(180)

Bhāṣya.

'*Yathā*,'—*in the form*; *i.e.*, sealed or unsealed, with witnesses or without witnesses and so forth.

'*In that same form*' should the thing be received back; the thing should be *recovered* in the same form in which it had been *delivered*.

In a case where it is generally known that the party concerned always keeps deposits properly sealed,—if a dispute arises, and the deposit is found to be unsealed, if the trustee were to say 'this man never seals his deposits, he forces them upon me and goes off,' he would be suspected of dishonesty and would lose his case; there being no room for any other evidence so far;—but when, on the seal being found broken, the question arises as to what part of the property has been extracted, the king should call other kinds of evidence; the guilty man however is to be punished in the first place, with the penalty prescribed for dishonest dealing in general;—and secondly, another penalty in connection with the 'deposit' has to be imposed after the exact amount extracted has been determined.

"In the case of a dishonest dealing, the man deserves to be mulcted of the entire amount involved."

True; but this is so only in cases where the entire guilt is clearly indicated by proofs. For instance, a certain village has been robbed,—Devadatta is accused of having colluded with other thieves and robbed the village on that day,—thereupon he pleads—'on that day I did not go to that village,'—witnesses declare that he had been seen in the village on that day, but it had not been seen that he had actually committed the robbery,—from this the deduction is that the man having denied the robbery as well as his presence in the village, since his presence had been proved, the denial of the robbery also was not true; so that when there was other evidence clearly proving the man's presence in the village, it was safe to infer that he had committed the robbery also.

In the present case however, it may be that the seal was broken through carelessness (and not necessarily intentionally), (so that the penalty need not always be severe).

'*As the delivery so the recovery*,'—*i.e.*, what was delivered 'sealed' should be received back also 'sealed.'

Fraudulent denial may be made by a man who might think that there would be no occasion for his being hauled up. The presence of such fraudulent intention may be

inferred; but the exact amount involved cannot be determined entirely on the assertion of the depositor, except through other kinds of evidence. So in such cases the right course would be to arrive at a decision with the help of ordeals. And (as for the actual award), it is only where no certainty is possible in regard to the entire claim that a partial decree is awarded.—(180)

VERSES CLXXXI-CLXXXII

WHEN REQUESTED TO RESTORE THE DEPOSIT, IF THE TRUSTEE DO NOT RESTORE IT TO THE DEPOSITOR,—THEN, ON THE DEPARTURE OF THAT DEPOSITOR, IN THE EVENT OF THERE BEING NO WITNESSES, THE JUDGE SHALL ACTUALLY DEPOSIT GOLD (WITH THE TRUSTEE) THROUGH SPIES OF PROPER AGE AND APPEARANCE, UNDER SOME PRETEXTS, AND THEN ASK HIM TO RESTORE IT.—(181-82)

Bhāṣya.

From what has gone before people might be led to think that in a case where there are no witnesses, recourse should at once be had to *ordeals* ;—and it is to guard against this that the author adds these texts.

The meaning is that in the case of non-payment of debt and other disputes, the judge has recourse to ordeals as soon as it is found that no witnesses are available ;—but this is not what should be done in the case in question ; in such cases the character of the man is tested through spies. If, on being so tested, it is found that the man does not trip in his dealings, then he shall not be disgraced with having to undergo an ordeal. If, on the other hand, he does trip, then it is only right that he should be suspected of having misappropriated the deposit ; and in this case he should be made to undergo ordeals ; because the mere fact of his having misappropriated one deposit does not necessarily prove that he had misappropriated another deposit also ; for it is just possible

that on account of some urgent need he might have been led to commit misappropriation in one case, while in another case, either by reason of his needs having been supplied or on account of repentance, he might have restored it honestly.

The present verses are to be taken as forbidding the course of hurriedly making the trustee undergo ordeals; and they are meant to point out a new line of evidence. Then again even though in the case of the man misappropriating the judge's deposit, there is immediate punishment, yet it does not follow that the same punishment shall be inflicted upon him in connection with the alleged, but uncertain, misappropriation of that belonging to the plaintiff. For if such penalty were to be inflicted even in cases of uncertainty, there would be no laws laying down the means of arriving at *certain* conclusions. Hence it has been considered necessary that decisions should be arrived at by means of reasonings.

For these reasons verse 181 should not be taken in its literal sense (that the man *shall be made to pay* '*yāchyaḥ*'); but it should be interpreted in a different manner, being construed along with verse 182.

The verbal construction of the verse we explain now as follows:—'*on the departure of that depositor*'—by whom the deposit had been placed,—'he shall *be asked by the judge to restore it.*'

There being no witnesses,—when the depositor asks for the restoration of his deposit and the trustee denies the deposit, saying 'you never deposited anything with me'—and being appealed to by the depositor, the king shall not at once put the trustee to the ordeal;—what then shall he do?—The judge shall deposit his own or some one else's gold or silver with the man, through spies, and then ask for its restoration.

The term '*judge*,' here stands for any person who has been deputed by the king to investigate the case.

"Is he to be asked directly by the Judge himself?"

No; it should be done through spies,—those same through whom the deposit has been placed.

'*Of proper age and appearance*';—they should be of 'proper age,' so that they may not be minors; for if such minors were to go to transact business, the man would suspect that they had been put up by others to cheat him; whereas if they were full-grown people, no such suspicion would arise.

Similarly they should be of '*proper appearance*';—in the case of some people their very appearance is indicative of their fickle nature; that appearance is to be regarded as 'proper' which indicates freedom from love or hatred.

Thus the meaning comes to be that the spies chosen should be such that the trustee may not suspect that the whole business was a trick to entrap him.

'*Under some pretexts.*'—That is, they may say, for instance,—'The man who is depositing this good is leaving the city from fear of harrassment by the king, that is why I am placing this deposit with you.' This untrue representation is what is called '*pretext*' here.

All this is to be done, when the original depositor (the original plaintiff) is not present.—(182)

VERSE CLXXXIII

IF HE ADMITS THE DEPOSIT EXACTLY IN THE FORM AND SHAPE IN WHICH IT WAS ENTRUSTED,—THEN THERE IS NOTHING IN THE CHARGE BROUGHT AGAINST HIM BY OTHERS.—(183)

Bhāṣya.

The man having been charged with the words—'This man is refusing to restore my deposit, because there are no witnesses to it,'—if he admits it '*in the form and shape,*' etc.—The distinction between 'form and shape' is based upon the deposit bearing or not bearing a secret seal;—or it may be based upon the action of the Receiver and the Depositor.

The deposit should be restored as unhesitatingly and quickly as it had been received;—that is, there should be no delay in the restoration.—(183)

VERSE CLXXXIV

IF, HOWEVER, HE SHOULD NOT RESTORE THAT GOLD TO THEM IN THE PROPER MANNER, HE SHOULD BE FORCED TO RESTORE BOTH; SUCH IS THE DECREE OF THE LAW.—(184)

Bhāṣya.

'*To them*,'—*i.e.*, to the depositors employed by the Judge;—if he should not restore '*that gold*'—which was placed in deposit;—'*in the proper manner*,'—this is exactly what has been spoken of in the preceding verse by the phrase '*in the form in which it was entrusted*';—then '*he*'—the Receiver—'*shall be forced*'—by the officers of the King—'to *restore both*'—the deposit of the plaintiff, as also that of the King.

'*Such is the decree*'—declaration—'*of the law*.'

What this means has already been explained.—(184)

VERSE CLXXXV

DEPOSITS, OPEN AND SEALED, SHOULD NEVER BE HANDED OVER TO THE NEXT-OF-KIN; IN THE EVENT OF A MISHAP OCCURRING, THEY BECOME LOST; THOUGH THEY DO NOT BECOME LOST, IF NO MISHAP OCCURS.—(185)

Bhāṣya.

'*Next-of-kin*,'—of the depositor; *i.e.*, his son, or brother, or wife. If the depositor has the right of ownership, so has his wife also; the son also has a right over the property of his grandfather; and the brother also, who is still united in property, has a right over it. Hence, if the depositor happens to be sent, any one of these relatives may tell the depository—'give the deposit to me, it belongs to me';—on this the depository may hand it over to him thinking—'this is their joint property, one has deposited it and another is taking it

away, what harm is there in this ?'—and it is with a view to guard against this that the text says—'*Deposits, open or sealed, shall not be handed over to the next-of-kin.*'

A hortatory argument is added—'*In the event of a mishap occurring, they become lost,*'—'*mishap*' in the form of the kinsman going out of the country and so forth,—if any such happens '*they become lost.*' If the kinsman, having received the deposit, did not make it over to the person who had deposited it, then, on being charged by the latter, what answer could the depositary give? It would be no answer to say—'it was taken away by your brother, who was the joint owner of it'; because it has been declared—'as the delivery so the recovery' (180); so that the deposit should be restored to the person who actually deposited it, be he the rightful owner or not. This is the simple fact that is set forth in this detail.

If however nothing happens to the 'next-of-kin' then there would be no harm in restoring the deposit to him; this is what is meant by the assertion.—'*They do not become lost, if no mishap occurs.*' Because in this case the answer of the depositary would be—'I restored it to him as otherwise it might become lost with me.'

What the text means is that—'if the deposit has been taken away by the depositor's kinsman, then, on being asked by the depositor to restore it, the depositary shall make it good out of his own property.'—(185)

VERSE CLXXXVI

IF THE MAN RESTORES IT HIMSELF TO THE NEXT-OF-KIN OF THE DECEASED DEPOSITOR,—HE SHOULD NOT BE HARASSED BY THE KING, OR BY THE DEPOSITOR'S RELATIVES.—(186)

Bhāṣya.

It has been just declared that while the depositor is still alive, the deposit shall not be handed over to his 'next-of-kin.' But when he is dead, if the depositary should himself

restore the property to his heir, who does not know that it belongs to him, then he shall not be made to undergo the trouble of a law-suit and all that follows in its wake.

If there be a suspicion that there may be something more with the man,—on the ground that the deceased was a wealthy man and he did not keep his property with any other person,—then other kinds of evidence shall be considered, but the man shall not be harassed with oaths or ordeals with poison, etc. ; though there would be nothing wrong in the employment of such test as the '*ghaṭakosha*,' the '*satya-taṇḍula*' and so forth (which are not so humiliating).

The condition of '*the absence of witnesses*' (mentioned in 182-183) should be taken as applicable here also.—(186)

VERSE CLXXXVII

IN DOUBTFUL CASES HE SHOULD TRY TO OBTAIN IT WITHOUT ARTIFICE AND IN A FRIENDLY MANNER; OR HAVING ASCERTAINED HIS CHARACTER, HE SHOULD SETTLE THE MATTER BY GENTLE MEANS.—(187)

(This verse, as also the *Bhāṣya* on it is wanting in *Mandalik, S, N and I. O.*)

VERSE CLXXXVIII

IN THE CASE OF ALL DEPOSITS, SUCH SHOULD BE THE METHOD OF RESTORATION; BUT IN THE CASE OF A SEALED DEPOSIT, HE SHOULD INCUR NOTHING, IF HE DOES NOT EXTRACT ANYTHING FROM IT.—(188)

Bhāṣya.

In the case of open deposits '*the method of restoration*' shall be as just described in verses 182 *et seq.*

The depositary shall not incur the censure of the debtor, as regards the deposit to be restored.

This same rule should be applicable to the case where the article deposited has been destroyed by rats, etc. For instance, the article deposited having been wrapped up in a piece of cloth and placed in a wooden vessel, if rats, with their sharp teeth, should cut through the wood and devour the article,—it is no fault of the depositary's. Then again, if the article is deposited in the form of a bundle sealed in a basket,—on account of its being such as cannot be contained in a wooden box,—then also if it is eaten by rats, it is no fault of the depositary's. This is specially so, if it is known to the depositor, who has been informed by the depositary that he possesses no wooden box (where the article would be safe from rats, etc.),—or if the depositor knows the man's character and is close by (and hence is in a position to know that the article has been really damaged by rats).—(188).

VERSE CLXXXIX

THE DEPOSITARY SHALL NOT MAKE GOOD WHAT HAS BEEN STOLEN BY THIEVES, OR CARRIED AWAY BY WATER, OR BURNT,—IF HE DOES NOT EXTRACT ANYTHING FROM IT.—(189)

Bhāṣya.

If thieves, known or unknown, should bore a hole through the wall and take away the article,—in spite of the depositary having taken all due care for its protection,—then the loss falls upon the owner (depositor).

'*Carried away by water*'—*i.e.*, moved away from its place of keeping, to some other place.—(189)

VERSE CXC

THE APPROPRIATOR OF A DEPOSIT, AS ALSO ONE WHO HAS NOT DEPOSITED ANYTHING (AND YET ASKS FOR IT),—the KING SHALL TEST BY ALL METHODS, AS ALSO BY MEANS OF OATHS AND ORDEALS PRESCRIBED IN THE SCRIPTURES.—(190)

Bhāṣya.

He who appropriates the deposit placed with him, in the absence of witnesses, and he who, having received it back, asks for it again,—both these the king shall '*test*';—'*testing*' stands for *trying to find out the truth*,—by employing '*all methods*';—'*methods*' stands for *proofs*. So that if the man is found to have fallen from the path of rectitude and denies the deposit,—then recourse may be had to beating and imprisonment also; specially when the property involved is a large one, the same methods have to be employed as in the case of thieves. But no punishment shall be inflicted if there is uncertainty in the matter.

The epithet '*prescribed in the scriptures*' has been added only by way of praise of the means to be employed.—(190)

VERSE CXCI

HE WHO DOES NOT RESTORE A DEPOSIT, AND HE WHO, WITHOUT HAVING MADE ANY DEPOSIT, ASKS FOR IT,—BOTH OF THESE SHOULD BE PUNISHED LIKE THIEVES, OR BE MADE TO PAY A FINE EQUAL IN VALUE.—(191)

Bhāṣya.

This verse prescribes the punishment for one who denies what has been deposited with him, and also for him who demands what was never deposited. The man is to be fined that amount which would be the value of the article in regard to which the fraud is committed.—(191)

VERSE CXCII

IN ALL CASES THE KING SHALL MAKE THE APPROPRIATOR OF A DEPOSIT PAY A FINE EQUAL IN VALUE TO IT; ALSO THE APPROPRIATOR OF A FRIENDLY LOAN.—(192)

Bhāṣya.

The preceding verse has laid down the punishment to be like that of the thief; under that rule there are two alternatives—corporeal punishment and fine equal in value to the property involved—to be determined according to the caste of the accused. So that in the case of castes other than the Brāhmaṇa, it would, under the said rule, be open to the king to inflict either of the two forms of punishment. And it is this possibility that is precluded by the present verse, which restricts the punishment to *fine* only; so that from among the penalties inflicted on thieves, what may be added to the *fine* is only *admonition* or *reprimand*, and not *mutilation* and other corporeal punishments.

It will not be right to take the present verse as precluding corporeal punishment from the case of Brāhmaṇas, who also would be subject to both kinds of alternative punishments sanctioned by the preceding verse. Because corporeal punishment has been already generally prohibited in the case of Brāhmaṇas;—in such texts as 'one shall not strike a Brāhmaṇa' (8.380).

'*Upanidhi*' here stands for what is used through friendship.

'*In all cases*,'—*i.e.*, irrespectively of the nature of the property or the caste of the person involved.

Others have given a technical meaning to the term '*upanidhi*'; but that meaning is applicable elsewhere, not here. Because, in the absence of any convention fixing the technical sense of a term, the right course is to take it in its ordinary sense. This same '*upanidhi*' is going to be mentioned again as '*friendly loan*' (under 196).—(192)

VERSE CXCIII

THE MAN WHO MAY APPROPRIATE, BY FRAUDULENT MEANS, THE PROPERTY OF ANOTHER PERSON, SHOULD BE PUNISHED PUBLICLY, ALONG WITH HIS ACCOMPLICES, WITH VARIOUS MODES OF DEATH.—(193)

Bhāṣya.

'*Fraudulent means*,' 'deceit,' and 'pretence' are synonymous terms: and this 'fraud' is of several forms:—(1) 'altering the thing': having shown saffron, the man substitutes the *kusumbha* flower for it,—(2) 'using short weights and measures,' and so forth. The rule regarding these forms of 'fraud' is going to be laid down later on, under 203 *et seq.* The forms of 'fraudulent means' meant here are—(*a*) 'threatening,' (*b*) promising rewards from the king, (*c*) promising to secure the love of a maiden, and so forth.

The man makes such false assertions to the other person as—(*a*) 'robbers shall rob you, if I do not protect you,' or (*b*) 'the king was very angry with you, and I have tried much to appease him,' or (*c*) 'I shall obtain for you from the king the post of the city-officer,' or (*d*) 'I shall secure for you some other great benefit,' or (*e*) 'my daughter is very much in love with you and has sent you this present';—under these pretexts he brings to the man some presents and takes away from him much more valuable things in return;—and in the presence of this other party he whispers something to the king, or to some other high official, and says to the man—'I have been talking regarding your business.'

The man who, by such fraudulent means, enjoys the property of others, for him the punishment is that he shall be punished '*publicly*'—on the public road—with such '*modes of death*,' as 'decapitation with the axe,' 'impalement,' 'tramling by elephants' and so forth.

Others have held, on the strength of the 'context,' that what is said here pertains to the case of 'Deposits'; in this sense the 'fraudulent means' would consist in putting off the restoration by such pretexts as—'I do not remember where I kept the thing,' 'the article was kept by another person, who is not here now, he shall come to-morow' and so forth; and the man who thus puts it off is said to 'appropriate' it.—(193)

VERSE CXCIV

AS MUCH OF A CERTAIN DEPOSIT HAS BEEN ENTRUSTED IN THE PRESENCE OF A NUMBER OF MEN—SO MUCH SHOULD IT BE DECIDED TO BE; THE PARTY MISREPRESENTING IT BECOMES LIABLE TO PUNISHMENT.—(194)

Bhāṣya.

'*Certain*' refers to the kind or quality of the substance, and '*as much*' to its *quantity*, *e.g.*, one party says—'I had deposited gold with him and he is giving me back bell-metal; I had deposited a hundred and he is giving me only half of it';—on being asked—'Did you hand over the deposit in secret or before witnesses?"—if he says '*in the presence of a number of men*'—*i.e.*, witnesses—then what these men, on being questioned, should declare, should be regarded as the truth.

'*Misrepresenting*'—*i.e.*, asserting otherwise than this, the party is punished.

If however the complainant says that the deposit was not handed over in the presence of witnesses, there is an occasion for the admitting of other kinds of proof.

This verse also prescribes nothing new.—(194)

VERSE CXCV

WHEN A TRUST HAS BEEN CREATED PRIVATELY AND ACCEPTED ALSO PRIVATELY, THEN IT SHOULD BE RESTORED ALSO SECRETLY; AS THE DELIVERY SO THE RESTORATION.—(195)

Bhāṣya.

Verse 180 has laid down the rule regarding *deposits*; and the present verse lays down what is to be done in the case of other transactions.

In the case of debts, friendly loans and sales, the restoration or repayment should be in the same manner in which it

had been contracted. So that if it has been given privately, it should not be made public by seeking for re-payment through a court of justice; and when a loan has been given on the strength of a document written by the debtor alone, then its payment should not be sought for through court. If this were done, the creditor's property should be made to suffer.

The case of deposits also being covered by this same rule, the addition of a rule in regard to them separately is meant to indicate that in their case the rule is *absolute*; hence in the case of transactions other than deposits, when effected in private, if subsequently suspicion should arise regarding the possibility of dispute, it may be right and proper to make it public.

Or the repetition may be justified on the ground that what is done in the present verse is the prohibition of making public what has been done in private, while in the preceding verse what has been said concerns 'sealed or open deposits.'

The term '*mithaḥ*' means '*in private*,' or '*mutually*.' As all transactions are done between two parties, the addition of this adverb is meant to deny the presence of a third party.

'*Dāya*,' '*Trust*,' though a generic term, stands here for transactions other than 'deposits,'—such, for instance, as *sale* and the like.—(195)

VERSE CXCVI

THUS SHALL THE KING COME TO A DECISION REGARDING PROPERTY GIVEN AS 'DEPOSIT' AND THAT WHICH IS GIVEN AS 'FRIENDLY LOAN,'—WITHOUT CAUSING ANY INJURY TO THE KEEPER OF THE DEPOSIT.—(196)

Bhāṣya.

This verse sums up the section.

'*What is given as friendly loan*'—*i.e.*, what is given, through friendship, for being used for some time.

The cases have to be decided in such a way as not to cause injury to the keeper of the pledge or deposit. '*Akṣiṇvan*'—without causing injury to.

In the whole of this section on 'deposits' only two or three verses are mandatory in their character, all the rest is purely commendatory,—mentioning things already known, in a friendly spirit.—(196)

XXXIII (C). Fraudulent Sale

VERSE CXCVII

IF A MAN SELLS ANOTHER MAN'S PROPERTY, WITHOUT BEING ITS OWNER, AND WITHOUT THE OWNER'S CONSENT, THE JUDGE SHALL NOT ADMIT HIM AS A WITNESS,—HE BEING A THIEF; THOUGH HE MAY NOT BE REGARDED AS A THIEF.—(197)

Bhāṣya.

The text now proceeds to deal with the head of dispute called 'Sale without Ownership.'

The '*property*'—articles—that belongs to another person,—if a person, who is not the owner—*i.e.*, who is not the son or any such relative of the owner,—and who has not obtained the consent of the owner,—'*sells*,'—him the judge shall regard as a '*thief*'; though the person who buys it from him may not regard him as a thief.

Him the judge '*shall not admit as a witness*,'—shall not call him as a witness; because he is just like a thief; and being a thief, he is not fit for being called as a witness.

The present exclusion is meant to be, not only from being called as a witness, but from all such acts as are to be done by a gentleman.

When a property is sold by one who is not its owner, without the consent of the real owner, it does not become the property of the buyer;—this fact being already known, the forbidding of such a transaction by means of asserting that such a person is not fit for being called as a witness, is meant to be only a diversified way of saying things—(197)

VERSE CXCVIII.

IF A RELATIVE, HE SHALL BE MADE TO PAY THE PENALTY OF SIX HUNDRED; IF HE IS NOT A RELATIVE, NOR ONE HAVING ACCESS TO HIM, HE SHALL INCUR THE GUILT OF THEFT (SPECIALLY).—(198)

Bhāṣya.

The preceding verse has declared that the man who sells the property of another person is not fit to be admitted to any transaction done by gentlemen, such as the giving of evidence and so forth; and the present verse prescribes for him the penalty of the fine of six hundred. He shall be made to pay —fined—six hundred coins.

'*If a relative,*' '*sānvaya*';—'*anvaya*' means *relation*; he who has some *relationship* is a '*relative,*'—such as the son, the wife, the brother and so forth. If such a relative, even though not actually permitted to sell, sells a property, he is not quite a thief; for he is likely to have the idea 'if it belongs to my father, it is mine'; and in his case it is likely that he will hand over the sale-proceeds to the rightful owner.

The man who has absolutely no relationship with the owner is said to be '*not a relative,*' '*niranvayaḥ*'; and such a person '*incurs the guilt of a thief,*'—*i.e.*, deserves to be punished as such, undoubtedly. Specially so if he is '*not one having access*'; *i.e.*, if he has no free access to the household of the owner, he should certainly be punished as a thief. If, on the other hand, the property sold by him has been obtained from the household itself,—having been given or sold by some one in the house,—and he has received it through ignorance or folly,—or if he has bought it in an open sale,—then he shall not be punished as a thief; he shall only be fined six hundred.

Or the term '*apasara,*' '*access,*' may be taken as standing for modes of acquisition other than *purchase,*—such as gift and the like. The meaning thus is—'He is to be regarded as

a thief, if he has not purchased it from anyone, nor acquired it through gift or other modes of acquisition.'—(198)

VERSE CXCIX

IF A GIFT OR SALE IS MADE BY ONE WHO IS NOT THE OWNER, IT SHOULD BE HELD TO BE AS NOT-MADE,—SUCH BEING THE RULE OF JUDICIAL PROCEEDINGS.—(199)

Bhāṣya.

It is not only purchase from one who is not the owner that is invalid,—but also what is received as '*gift*'—a 'gift' is that which is given either as *charity* or as a *friendly present*,—is not valid.

Verse 197 has declared that neither the buyer nor the seller is the owner of the property; and the present verse denies the ownership in cases where it may be considered as having been acquired, in accordance with the law that—'one becomes the owner, through inheritance, purchase, partition and gift' (*Gautama*, 10. 39).

Such is the rule of judicial proceedings, and it should not be transgressed.—(199)

VERSE CC

WHERE POSSESSION IS EVIDENT, BUT NO SORT OF TITLE IS PERCEPTIBLE, THERE TITLE, AND NOT POSSESSION, SHALL BE THE PROOF; SUCH IS THE SETTLED RULE.—(200)

Bhāṣya.

In a case where, in connection with such things as cattle, gold, lands and so forth, one man is found to have 'possession,'—while the 'title,' arising from inheritance, gift and other sources, indicates the ownership of another man,—it is 'title'

that is to be regarded as more authoritative; and mere possession is no proof of ownership.

'*Such is the settled rule*';—the eternal rule is that mere possession does not create ownership; what sort of possession does create ownership has been explained before, under verse 147; and the seeming incompatibility of the present verse with that has also been explained under that same verse.—(200)

VERSE CCI

IF A MAN OBTAINS A PROPERTY FROM THE MARKET, IN THE PRESENCE OF WITNESSES, HE ACQUIRES THAT PROPERTY WITH A CLEAR TITLE OBTAINED BY LEGAL PURCHASE.—(201)

Bhāṣya.

The present verse shows by what sort of purchase real ownership is produced.

'*Vikraya*,' '*market*,' is the place where people sell their goods. If one obtains from the market, some property,—goods put up for sale, in the shape of cattle and the rest,—or the price is paid for it,—'*he acquires it*'—by '*legal purchase*,' by paying the proper price,—'*in the presence of witnesses*,'—in the shape of intermediaries and brokers; and thus '*he acquires it*,' and does not forfeit it. If the thing has been purchased from one who is not the rightful owner of it, then the property is restored to the rightful owner, and the *bonafide* purchaser obtains the price he had paid from the person who had sold it to him. In the event of his purchase being not *bonafide*, he is punished and also forfeits the property. This is what is thus asserted—'The purchaser proves his *bonafides* by producing the seller, the rightful owner receives the property, and the king receives the fine paid by the seller, the purchaser receives back the price he had paid from the purchaser' (*Yajñavalkya*, 2.170).

This same idea is set forth in the present verse.—(201)